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GRANT'S  
LAW OF BANKING  
AND BANKERS.



Fourth Edition.



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GRANT, James

*A. Forbes  
Pencil  
out*

GRANT'S  
Treatise  
ON THE  
LAW RELATING TO BANKERS  
AND  
BANKING COMPANIES,  
WITH AN  
APPENDIX CONTAINING THE MOST IMPORTANT STATUTES IN  
FORCE RELATING THERETO.

Fourth Edition

WITH SUPPLEMENT CONTAINING THE BILLS OF  
EXCHANGE AND BILLS OF SALE ACTS, 1882.

BY  
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# PREFACE

TO THE

FOURTH EDITION.



THE Editor has endeavoured to follow as nearly as possible the arrangement adopted in the previous Editions. Such alterations as have been made have been rendered necessary by the many changes that have taken place in the Law during the past six years. Many cases that have hitherto been cited *in extenso* the Editor has been obliged to curtail, or merely refer to as authorities, so as to afford space for fresh matter. The Chapter on Bankruptcy has been entirely rewritten, and a new Chapter on Bills of Sale added. The Editor wishes in conclusion to acknowledge the assistance rendered him by his friend Mr. LACEY SMITH, of the Middle Temple.

CLAUDE C. M. PLUMPTRE.

5, HARE COURT, TEMPLE.



## PREFACE TO THE THIRD EDITION.

---

My former Edition of this Work being out of print, and a new Edition being asked for, I have undertaken its preparation at the particular request of the Publishers.

In fulfilling the task thus entrusted to me, I have endeavoured to add to the acknowledged utility of the original Work, by eliminating much matter that has become obsolete or immaterial, and by presenting the existing Law of Bankers and Banking Companies, either affected by legislation, or developed by the decisions of the Courts, to the time of publication. Some chapters which were inconveniently long, or unconnected in subject, have been subdivided or re-arranged, and others introduced.

I have made a liberal use of Mr. Morse's well-written (American) "Treatise on Banks and Banking," to illustrate or confirm propositions advanced in Mr. Grant's Work, which is but the reciprocation of the compliment paid by Mr. Morse to his predecessor or pioneer in the path of Legal Banking literature. With the view of extending the professional value and popularity of the Work, the existing statutory enactments of the United Kingdom relating to Bankers, Bank Notes, and Banking Companies have been carefully collected, and are chronologically grouped together in the Appendix.

An excellent precedent of a Memorandum of Association, and of Articles of Association of a Limited Banking Company, is also given.

The late Chancellor of the Exchequer's Bank of England Notes Bill of the last Session of Parliament, although withdrawn, is inserted at the end of the Appendix as a matter of history.

R. A. FISHER.

3, ESSEX COURT, TEMPLE,  
*22nd September, 1873.*

## PREFACE TO THE SECOND EDITION.



IN preparing this Edition, the Editor has been actuated by a desire to render it as acceptable as possible to the classes for whose use the original Work was designed, and has spared no pains to accomplish that object. In consequence of the important alterations affecting Banks and Bankers introduced by Law, and the expansion of Banking operations produced by commerce, since the first appearance of this Work, the Editor has found himself obliged to re-construct and re-arrange portions of it, and to add several chapters. The bill of the Chancellor of the Exchequer for removing restrictions on the issue of Bank Notes, as amended in Committee, together with the reasons on which it was founded, and also the last official returns of all the Banks in the United Kingdom, as being likely to be of practical utility, are inserted in the Appendix.

R. A. FISHER.

3, ESSEX COURT, TEMPLE,  
*5th April, 1865.*

## PREFACE TO THE FIRST EDITION.



THESE pages are the result of an endeavour to compile the Law relating to the business of Banking, as gathered as well from Statutes as from the decisions at Common Law, in Equity, and in Bankruptcy. A work on such a plan, if properly executed, seems to be wanting, and the Author trusts that his attempt to supply the void will not prove wholly unacceptable to the class of persons for whose use it is principally designed—the professional advisers of the great Banking interests of this country. The first duty, it is conceived, of any one who deals with a subject of so great importance, and of such general interest, is to aim solely and entirely, to the exclusion of all other purposes, at practical utility; accordingly from his book the Author has carefully excluded all ambitious attempts at scientific disquisition: the endeavour has been not to speculate how the Law might be improved, not to lay down what it ought to be, but what it is; so that every one, whether concerned for a person carrying on the business of Banking solely, or in a Common Law partnership, whether a shareholder, or a director in a Banking Copartnership, under Statute 7 Geo. IV. c. 46, or in a Joint Stock Company under Statute 7 & 8 Viet. c. 113, might find here the Law, so far as it has hitherto been prescribed by statutory enactment, or developed, ascertained and explained by judicial decisions, clearly, accurately and usefully stated. In this view, the plan has been followed of placing before the reader not merely statements of the dry points of Law, which were decided in the cases collected; but, as a rule,

a summary of the principal facts, and occasionally of the arguments urged before the Court, together with the main grounds on which the judgment proceeded, is also presented. By these means, and by the endeavour to lay down no position or principle unaccompanied by examples to illustrate its application and effect, it has been hoped to provide facilities, in a compendious form, for the solution of every question that can arise, provided such question, in its nature, falls within any of the classes of questions which have already passed into *res judicata*. By these means, at any rate, it may be hoped that a person who consults this Work, in order to know what are his rights or liabilities, and what the proper course of conduct in any given set of circumstances, will be enabled readily to observe and to decide whether the principles and rules stated under the head to which his difficulty belongs, have been applied to, or deduced from, circumstances the same as, or analogous to, those of his particular case, and whether the reasons assigned by the Court meet the difficulty and govern the case.

In order to render the Treatise more widely available for every-day reference, the rules, suggestions, cautions, &c. for the conduct of Bankers, which the Author has thought it desirable to interpose, while they have been immediately derived, in all cases, from the observations of the Judges in Law and in Equity, have been—as it is hoped will be found—as much as possible expressed in the language of business, divested of legal technicalities, and adapted for the probable requirements of practical men.

\* \* \* \* \*

With respect to those comparatively new modes of carrying on the business of Banking, the Banking Copartnerships, and Joint Stock Banking Companies, much attention has been paid to place before the reader the Law relating to them in as clear a light as possible; the subject of directors' powers and liabilities, civil and criminal, the

rights and liabilities, and remedies of shareholders, as involved on the Bankruptcy or Winding-up of these Bodies, and also generally, it is hoped, will be found explained in as satisfactory a manner as the present state of the Law admits of.

The subject of Colonial Banks has not been omitted, and there is subjoined a Summary View of the Law relating to Savings' Banks.

MIDDLE TEMPLE,

*Nov.* 18, 1856.

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## ADDENDA.

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Page 246. To note (h), add "*Symons v. Mulkern*, Weekly Notes, June 17th, p. 94."

Page 365. *Altering Number of Bank Note*.—Such an alteration, though it does not vary the contract, is material in the sense of altering the note in an essential part, and therefore vitiates it even in the hands of an innocent holder. *Suffell v. Bank of England*, Weekly Notes, May 6th, 1882, p. 63.

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A

# TREATISE ON THE LAW

RELATING TO

## Bankers and Banking Companies.



### CHAPTER I.

#### THE RELATION BETWEEN BANKER AND CUSTOMER.

THE ordinary relation between banker and customer is this: the customer opens an account with the banker by paying a sum of money into the bank, the banker undertaking to hold himself liable for the payment of a like sum to the customer's use, either paying interest on the money or not, as the course of business of the bank or the special arrangements between the banker and the individual customer may be, and also agreeing to honour or cash any cheques, or orders for the payment of any sums of money, which the customer may send to him, during business hours, to the extent of the sum deposited.

A less ordinary, but still a not uncommon, relation between banker and customer is, that the banker makes advances to the customer or allows him to overdraw his account, charging interest on the advances, and in most cases requiring a deposit of securities, or obtaining the guaranty of some third person, for the repayment of such advances, with interest; and whilst such accommodation continues the former relation of the parties is of course inverted.

But neither of these relations partakes of a fiduciary character, nor bears analogy to the relation between principal and factor or agent, who is a *quasi* trustee for the principal with respect to the particular matter for which he was appointed factor or agent.

Money paid into a bank ceases altogether to be the money of the person paying it in; it is the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it (*a*). To all intents, it is the money of the banker to do as he may please with; though it is true that, in a popular sense, it is spoken of as "my money at my banker's;" "my balance at my banker's;" and though no one can doubt that in ordinary language the term "ready money" includes the speaker's balance at his banker's. Accordingly, there are many decisions construing phrases occurring in wills, of this description, to carry sums standing in a banker's books to the credit of the testator.

This, looking at all the terms of a will, has been held to be the extent of a bequest of "all my ready money" (*b*).

So, under the words "ready money," a sum in a savings bank was held to pass in a will (*c*). "To my wife all my ready money at my bankers, in my dwelling-house or elsewhere," pass cash balances in the hands of the testator's banker, and of his agent (*d*).

But money in the hands of his salesmaster in Smithfield does not pass under "all his ready money and securities for money," there being no evidence that the salesmaster acted as the testator's banker (*e*).

Money at a banker's, placed to the trade account of a

(*a*) *Foley v. Hill*, 2 H. L. Cas. 36; see *Goodwin v. Roberts*, L. R., 10 Exch. p. 351.

(*b*) *Parker v. Marchant*, 1 Ph. 356.

(*c*) *In re Powell*, Johns. 49; 5 Jur., N. S. 331.

(*d*) *Fryer v. Ranken*, 11 Sim. 55.

(*e*) *Smith v. Butler*, 3 J. & L. 565; *De Roebuck v. Lord Cloncurry*, 5 Ir. R., Eq. 588.

trader, has been construed to pass in his will under "all my stock in trade" (*f*).

Or the balance in a testator's favour at his bankers may be included under the expression "all the debts due to me," and pass accordingly (*g*).

Or the balance at a banker's may pass as "money in hand" (*h*).

So the balances at a testator's banker's upon a current account, and also upon a deposit account, where deposit notes or vouchers were given by the banker as a security for the money, the balance carrying interest and considered as money at the disposal of the depositor, and as readily accessible by him as money in an ordinary account current, were both held to pass under "all my moneys" (*i*). And under a gift of a testator's "ready money," two sums of money at his banker's, one on a drawing account, and the other on deposit, for which no notice of withdrawal was necessary, will pass (*j*).

A gift "of any small balance remaining in the bank after payment of my funeral expenses," passed the whole balance possessed by the testator at the time of his death, though such balance had increased from 480*l.* to over 1,301*l.* (*k*).

Effects consisting partly of cash and partly of money, held by a banker on deposit notes, pass by a bequest of all the residue of a testator's moneys (*l*).

But still the legal relation of banker and customer, in their ordinary dealings in money, is purely and simply that of debtor and creditor respectively. Money paid into a banker's is merely a common law debt, and there is

(*f*) *Stuart v. Earl of Bute*, 3 Ves. 217.

(*g*) *Carr v. Carr*, 1 Mer. 541, n.

(*h*) *Faisey v. Reynolds*, 5 Russ. 12.

(*i*) *Manning v. Purchell*, 2 Sm. & G. 292; affirmed on appeal, 7 De G., Mac. & G. 55. "Securities for money," on the other hand, would not pass money at a banker's on a deposit account. *Hopkins v. Albot*, L. R., 19 Eq. 222; 44 L. J., Chanc. 316; 23 W. R. 227.

(*j*) *Stein v. Richardson*, 37 L. J., Chanc. 369.

(*k*) *Page v. Young*, L. R., 19 Eq. 501; 23 W. R. 479.

(*l*) *Langdale v. Whitfield*, 4 K. & J. 426; 27 L. J., Chanc. 795.

nothing of a fiduciary character in the relation between the parties (*m*).

And it seems that the Statute of Limitations runs against this debt as against any other simple contract debt; and if there has never been any payment of the principal, or interest, or some other acknowledgment by the banker satisfying the provisions of the act, subsequently to the first deposit, for six years, the right to recover the sum deposited would be barred by the statute (*n*).

If bankers were trustees of money of their customers in their hands, this must follow, that notice to them of the drawer having assigned to the payee of a cheque an interest in so much of the drawer's money would, *of itself*, bind the bankers to pay to the payee or bearer, and give the payee or bearer, on non-payment, a right in equity against the bankers (*o*).

But it has been expressly decided that money deposited with a banker, and ordered by cheque to be paid to a third person, is not money had and received to the use of that person until the bankers have bound themselves to pay it over (*p*). The debt until then remains between them and the customer; so that in case of non-payment to his order, the payee has no remedy, either at law or in equity (*q*),

(*m*) *Foley v. Hill*, 2 H. L. Cas. 39, 42, 45; *S. P.*, per Knight Bruce, L. J., in *Smith v. Leveaux*, 2 De G., J. & S. 5. A banker as a witness is bound to answer what the balance of a party to a cause was on a given day, as the knowledge does not come to him in the nature of a confidential or privileged communication. *Loyd v. Freshfield*, 2 C. & P. 325. A banker with whom a contributory has kept an account is liable to be summoned under the Companies Act, 1862, s. 115, and to produce his books relating to the account, and to give all information in his power touching his affairs. *Forbes's case*, 41 L. J., Chanc. 467.

(*n*) *Polt v. Clegg*, 16 M. & W. 321: see *Bridgman v. Gill*, 24 Beav. 302. It is no breach of a contract to pay interest on money deposited, that the banker had not regularly entered the interest in his books, the money having been suffered to lie in his hands for eight years. *Foley v. Hill*, 2 H. L. Cas. 40. The usage of bankers by which they charge interest on advances to customers has been expressly sanctioned by the Courts. *Gwyn v. Godley*, 4 Taunt. 346; *King v. Bradley*, 5 Price, 536; *Crosskill v. Bower*, 32 Beav. 86. But before compound interest can be charged an agreement must be shown to that effect. *Ex parte Brown*, 9 Ves. 223.

(*o*) *Dearle v. Hall*, 3 Russ. 1.

(*p*) *Malcolm v. Scott*, 5 Exch. 610.

(*q*) *Hopkinson v. Foster*, L. R., 19 Eq. 74; 23 W. R. 301. This rule is

against the banker; but the customer is the proper party to sue, and, as will be seen, may recover substantial damages for the injury, always assuming that his account at the time shows a sufficient balance in his favour. The customer has also the right of ordering the banker to carry his balance, or any part of it, to any other account kept with the banker by any other person, and this may be effectually done either by a cheque or an order in writing or orally, though a formal mode is usually adopted (*r*). It is of the nature and essence of the transactions between banker and customer, that the latter, having a balance in his favour, will be able to command payment at sight (*s*).

It must be clearly remembered, then, that the ordinary relation between a banker and his customer is that of debtor and creditor, and not that of trustee and *cestui que trust* (*t*).

But although there is nothing in this relation to constitute the banker a trustee, he may, of course, by agreement, take upon himself the character of an agent, or make himself a trustee towards a *cestui que trust*; for example, if a customer deposits exchequer bills with a banker, and he undertakes to receive the interest upon them, or undertakes to negotiate or make sale of them, and to credit the customer's account with the proceeds of the sale, in this case, it is obvious, he is in the position of a trustee, and partly, at least, sustains a fiduciary character; but this service may or may not be appended to his employment of banker; his trade of banker is totally independent of it; his trade of banker consists of the general trade, to which the other is an accidental addition (*u*).

Where three trustees, two of whom were bankers, were empowered by a creditors' deed to carry on the business of

not affected by subsect. 6, sect. 25 of the Judicature Act, 1873. *Schroeder v. Central Bank of London*, 24 W. R. 710; 34 L. T. 735.

(*r*) *Watts v. Christie*, 11 Beav. 551.

(*s*) 11 Beav. 546.

(*t*) *In re Agra and Masterman's Bank, Ex parte Waring*, 36 L. J., Chanc. 151; L. R., 6 Chanc. 206; 24 L. T. 376; 19 W. R. 486.

(*u*) *Per Lord Brougham in Foley v. Hill*, 2 H. L. Cas. 44.

the debtor, and to borrow money "from any bankers or other persons" for that purpose, and the bankers made advances of money to the trust at compound interest, the Court held that, having regard to their fiduciary character, they could make no profit, and were entitled to simple interest only on their advances (*x*).

So when a banker receives money to invest in stocks, or receives orders to appropriate the customer's balance, or a specified part of it, to any specific purpose, and assents, or does not repudiate the orders, he is in the situation of a trustee or of an agent with reference to that money.

But it is not necessarily part of the business of bankers to invest money for their customers (*y*).

Where bankers take a mortgage security from their customer, for a fixed sum owing to them by the latter, the relation of banker and customer ceases thenceforth as to that sum, and it cannot be included in the customer's current account, so as to entitle the bankers to charge compound interest thereon; and in reference to the sum so secured, the mutual rights and obligations are thenceforth those of mortgagees and mortgagor (*z*).

As the right of the customer is to draw out the whole of the sum he deposits with the banker at any time that he may so please, the acceptance by the banker of a bill drawn upon him by his customer against the amount of the balance in his favour, and made payable at a distant day, is in effect a borrowing of the sum until that day by the banker; for the customer, by drawing the bill, consents that that which is payable immediately shall not be payable until the maturity of the bill (*a*).

It is the duty of a banker in no way to disclose the state of his customer's account, except on a reasonable and

(*x*) *Cresskill v. Bower*, 32 Beav. 86; 32 L. J., Chanc. 540.

(*y*) *Bishop v. Countess of Jersey*, 2 Drew. 143; 23 L. J., Chanc. 483.

(*z*) *Mosse v. Salt*, 32 Beav. 269; 32 L. J., Chanc. 756.

(*a*) *Bank of England v. Anderson*, 4 Scott, 118; 3 Bing. N. C. 663.

proper occasion (b). It has been doubted whether an action will lie at all against a banker, unless the customer has been damnified by the act of disclosure (b). When a cheque is presented for payment, and there are not sufficient assets of the drawer's in the banker's hands, he cannot say to the holder, "not enough to meet it by such a sum," and so enable the holder to pay in the deficiency to the drawer's account, and obtain payment of the cheque to the prejudice of other creditors. A banker is not justified when such is the case in going further than saying "not sufficient assets" (c), or, what is more usual, "apply to the drawer."

Bankers, as we have said, are bound to obey the orders of their customers within the usual course of business; if they disobey them they are responsible both for the delay and for any consequence which directly follows the delay. Thus a house in America employed an agent in Birmingham to purchase and ship goods for them: on account of which they sent to him a bill drawn by A. in America on B. in London, but without indorsing it. The agent directed his bankers to obtain B.'s acceptance of it; B. refused to accept; of which, however, the bankers omitted to give any notice until the bill was due, when they again presented it and it was dishonoured. Before the bill arrived in this country A. had become bankrupt, never having had any funds in the hands of B. Then here was a damage done to the agent, but to what amount? Not to the whole amount of the bill, because of the circumstance that the house in America, not having indorsed, was not entitled to notice of dishonour of the bill, and still remained liable to him for the price of the goods he had sent out to them; also the drawer was not entitled to notice, because he had no funds in the hands of the

(b) *Hardy v. Veasey*, L. R., 3 Exch. 107; 37 L. J., Exch. 76. If the duty not to disclose rests on an implied contract not to do so, then, it is submitted, an action would lie though no damage could be proved.

(c) *Foster v. Bank of London*, 3 F. & F. 214.

drawee; therefore all that the agent was entitled to recover, as the circumstances of the case stood, was the damage which he had sustained by reason of his having been delayed in prosecuting his remedy against the drawer (*d*).

In ordinary circumstances it is obvious that the bankers might have become liable for the whole amount of the bill, namely, if the American house had indorsed, and the bill had been drawn against effects.

But, as has been said, it is only to their customer that, in the absence of any act of theirs, they are responsible; thus bankers, when they receive bills from a foreign correspondent with directions to pay the amount to the plaintiff, and when he applies to them, they refuse, and afterwards the amount of the bills comes to their hands, the plaintiff cannot sustain an action against them as for money had and received to his use (*e*).

If, however, the bankers had assented to the order, and informed the plaintiff that they held the money for him, he might, of course, have sued them (*f*).

So an order by a customer to his bankers to hold the customer's money at the disposal of A. B., is revocable until actual appropriation or payment of the money accordingly (*g*), or until a promise by the banker to A. B. to make such payment (*h*).

We have already stated the duty of a banker to be to conform to the orders of his customer, with respect to the money deposited by the customer, so long as there is in his hands a balance in favour of the customer, and the orders relate to matters which it is the usage and practice of the particular bank, or of the bankers in the district, to do for their customers, or which the bank has specially

(*d*) *Van Wort v. Woolley*, 3 B. & C. 439.

(*e*) *Williams v. Everett*, 14 East, 582; *Stewart v. Fry*, 7 Taunt. 339; *Wedlake v. Hurley*, 1 C. & J. 83.

(*f*) *Frühling v. Schröder*, 2 Bing. N. C. 77.

(*g*) *Gibson v. Minet*, R. & M. 68; 1 C. & P. 247; 2 Bing. 7.

(*h*) *Lilly v. Hays*, 5 A. & E. 548; *Hodgson v. Anderson*, 8 B. & C. 342.

agreed with the customer to do for him. Now, if the bankers perform such orders punctually, they will often be exonerated from loss in cases where it may be difficult, perhaps, to see any other ground for holding them irresponsible except that the customer's orders have been faithfully and fully performed without negligence or delay.

Much more, then, will they be irresponsible if, acting as the agents of other bankers with whom a party has an account, they conform to the orders of that party, though with him they have no account at all.

Thus, A.'s broker, by his directions, was accustomed to pay dividends into a banker's in London to A.'s credit in account with a bank at Abingdon, where A. resided, and the London bankers had been accustomed to act accordingly, accepting the payments, giving credit to the Abingdon bank and advising them by post next day. A certain payment of this kind was made on the 14th of October into the London house by cheque, and they wrote to advise the Abingdon bank in the usual way by the post of the 15th, on the morning of which day the Abingdon bank stopped payment, and never again opened the bank for business. On that day the Abingdon bankers were indebted to the London house to a large amount. It was held that A. had no claim against the London bank for the payment so made; for the course of business showed that A. and the country bankers had agreed that they should account to him for all sums so to be paid into the London house as above, and that the London house had actually carried the money to their credit (*i*).

Here the ground of decision seems to be, that the London bankers, by conforming to the arrangement by which in effect they undertook to comply with A.'s orders as to any money that might come to their hands purporting to be paid in by his authority and under directions

(*i*) *Williams v. Deacon*, 4 Exch. 401.

from him as regarded his account with the country bank, of which conformity the course of dealing was evidence conclusive as not being met by counter proof, the London bankers were exonerated from liability to him; but, possibly, if it could have been shown that they had not in fact given credit for the money in account with the Abingdon bank before it was reclaimed by A., the result would have been otherwise (*k*).

It will be observed that A. was not a customer of the London bank; but, in another case, where a person paid money into a London bank, also not being a *customer* of the bank, in order that they might cause it to be paid to him or his order, through their correspondents, bankers in a country town, on a certain day, and they received the money, but did not cause the money to be paid on the day, whereby the party suffered damage, he was apparently considered to have a good cause of action against the London bank, on the ground that the receipt of the money was a good consideration for an undertaking to the above effect, and that they might be sued for the breach of their promise in that respect. Now here the London bankers, it is submitted, must either be considered as gratuitous bailees or as debtors in respect of the money paid in; but if they were the former, then it would have been a breach of their duty if they had not remitted the identical coins or bank notes paid in—a proposition which could hardly be maintained as against bankers; therefore it would seem that the party paying in, though not having a running account with them as a customer, must be considered as a customer *pro hac vice*, and the bankers as debtors to him *pro tanto*, and liable to comply with his orders according to the usual relation of banker and customer (*l*).

(*k*) See *Stevens v. Masterman*, cited in 4 Exch. 401, where Lord Abinger, C. B., held at Nisi Prius that such a payment might be countermanded. See *Atkin v. Barwick*, 1 Stra. 166; *Walker v. Rostron*, 9 M. & W. 411, 421; *Gibson v. Minet*, 2 Bing. 7.

(*l*) *Shillibeer v. Glyn*, 2 M. & W. 143. In this case the declaration had

There can be no doubt that a banker who pays a cheque, the name of the drawer of which is forged, cannot take credit for such payment in his account with the drawer. But if the cheque is drawn payable to order, and the payee's name is forged, and the banker pays the holder, without knowledge of the forgery, the banker is protected in making such payment by virtue of the 16 & 17 Vict. c. 59, s. 19, and entitled to charge the drawer therewith (*m*).

The nature of the business of bankers has been laid down, by very high authority, to be part of the law merchant; and it is to be judicially noticed by the Courts (*n*).

in the first instance alleged the party to be a customer, but the allegation having been traversed it was struck out, and the amended declaration was demurred to. The money was returned to the plaintiff by the bankers, who afterwards compromised the action.

(*m*) *Hare v. Copland*, 13 Ir. Com. Law Rep. 426. See remarks on this Act in Chapter II.

(*n*) *Per* Lord Campbell in *Bank of Australasia v. Breillat*, 6 Moore, P. C. 173; 12 Jur. 189; referring to *Brandao v. Barnett*, 12 C. & F. 787; 3 C. B. 519.

## CHAPTER II.

## CHEQUES.

Definition.

A CHEQUE on a banker, or, as it is sometimes called, a banker's draft, is a written order for the payment of a specified sum of money to a person named, or bearer, or order (*a*). It is directed to the banker, and should be signed by the person who draws it, and, out of whose moneys deposited with the banker, it is to be paid on presentment. Its legal effect is, in a great degree, that of an inland bill of exchange drawn on the banker, and payable to the bearer or to order on demand; in some respects, however, as will be shown, it differs from such instrument.

Form.

The form of a cheque is usually the following:—

*London, 5th April, 1873.*

MESSRS. HOLDFAST & Co.—Pay Mr. Abraham Newland or 

bearer
order

  
twenty pounds.  
£20: 0s. 0d.

JOHN STILES.

No precise form of words is essential; any words that signify not a precatory request, but an order (*b*) to pay a

(*a*) The most correct definition of a cheque to be found in all the treatises would seem to be that given in Story on Promissory Notes, from which the above is taken. In the Civil Code of the State of New York, “a cheque” is defined “to be a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.” Chapter IV., Cheques, ss. 18, 25. And by the Stamp Act, 1870, 33 & 34 Vict. c. 97, s. 48, (1), the term bill of exchange, for the purposes of the stamp duties, includes also draft, order, *cheque*, and letter of credit, and any document or writing (except a bank note), entitling, or purporting to entitle, any person, whether named therein or not, to payment by any other person of, or to draw upon any person for, any sum of money therein mentioned.

(*b*) *Rex v. Ellor*, 1 Leach, C. C. 323, was an indictment on the 7 Geo. 2, c. 22, for forging an order for payment of money. The order was in the following words:—“Messrs. Songer,—Please to send ten pounds by the “bearer, as I am so ill I cannot wait on you. Elizabeth Wery.” The

sum of money, will suffice, provided the following points are observed:—

1. *That the paper is directed to the banker by his proper or usual name, style or firm.* Constituent elements.
2. *That it is dated.*
3. *That it contains the sum to be paid.*
4. *That it is stamped.*
5. *That it is made payable to bearer, or to order, on demand.*
6. *That it is signed by the party drawing or entitled so to do.*

It seems that a cheque, in any other language than the English, would not be according to the usage of bankers in this country, and therefore a banker might legally refuse to cash such a cheque if he had any doubt as to the genuineness of the drawer's signature.

We will now state the reasons for these several requisites in their order, together with the principles and rules that have been laid down respecting them, and such illustrations and examples as appear to conduce to the full comprehension of the subject.

1. *As to the Address or Direction.*—A cheque, being in fact an open letter of request, must, it is obvious, to be operative, bear upon it the name of the person who is requested, as well to indicate to the holder where to pre- Address or direction.

Court said, "The Act of Parliament means such an order for payment of money as, if genuine, the party giving it had a right to make; but this appears to be a mere letter, rather requesting the loan of money than ordering the payment of it. The terms do not import anything compulsory on the part of the drawee to pay it." In the case of *Little v. Slackford*, M. & M. 171, where the paper was in these words:—"Mr. Little, "please to let the bearer have seven pounds, and place it to my account, "and you will oblige your humble servant, R. Slackford," Lord Tenterden, C. J., held, that it did not require a stamp, and was not a bill of exchange. "I think no stamp is necessary; the paper does not purport "to be a demand by a party having a right to call on the other party. "The fair meaning is, you will oblige me by doing it;" or, as it was said in *Mitchell's case*, 1 Leach, C. C. 95, n., a man has no right positively to expect performance, when requisition is not a right and performance a duty.

sent it for payment, as to show the banker who it is that is called upon to cash the order. On the same grounds that a bill of exchange must have an address according to the custom and usage of merchants, a cheque ought to have one (*d*).

If the bank is carried on under a firm or company, either the proper and full style of the firm or company, or the style by which it is usually designated and known, ought to be used.

No person but the person addressed could, after cashing the cheque, have a right to recover from, or have allowed in account with, the drawer, the sum so advanced, which would in fact be in the nature of a gratuitous payment.

Date.

2. *As to the Date*.—A cheque may be dated on any day before, or on the day, on which it is issued. A cheque is issued when it is in the hands of a person entitled to demand cash for it (*e*). There is no objection to dating a cheque on a Sunday (*f*), though of course it would not be presentable or payable on that day.

But if a banker cashes a cheque before the day of its date, or before it is due, he will not be protected; and, therefore, where a banker cashed such a cheque that had been lost, he was made to repay the amount to the party who had lost the cheque (*g*).

A cheque, whether payable to bearer or to order, may be post-dated, that is, dated on a day after that on which it is in fact drawn or issued, without being invalid, if it is stamped, as will hereafter appear (*h*).

Altering the date of a cheque is a material alteration, and will invalidate the cheque (*i*).

(*d*) Beawes, *Lex Mercatoria*, p. 563, pl. 3, edit. 1813; *Com. Dig. Merchant*, F. 5.

(*e*) *Ex parte Bignold*, 1 Deac. 735; 2 Mont. & A. 633.

(*f*) *Begbie v. Levy*, 1 C. & J. 180.

(*g*) *Da Silva v. Fuller*, Chitty on Bills, 180, 272, 10th edit.; and *per Parke, B.*, 7 M. & W. 178.

(*h*) *Post*, p. 20.

(*i*) *Vance v. Lowther*, L. R., 1 Ex. D. 176; 45 L. J., Ex. D. 200; 34 L. T. 286; 24 W. R. 372.

3. *The Cheque must contain the Sum to be paid.*—The relation between a banker and a person who deposits money in his bank being simply that of a debtor to a creditor, to the amount deposited, which, by the usage of bankers, the banker is, at all times, bound to pay out again to the customer upon his cheques under his hand, until the whole, *minus* the banker's commission (where commission is payable), is exhausted, provided the cheques are presented within banking hours: it follows, that the payments cannot be required by the drawer of the cheque to be made, in any other mode, than that in which an ordinary debtor can be required to pay an ordinary debt, that is to say, in English money only. The banker is not a bailee, who is bound to return in specie the coins or other kind of money deposited, upon demand; therefore, although one thousand pounds have been deposited with him in gold, he is not bound to return gold in payment of cheques drawn against it; any cheque which may be presented will be duly honoured by paying it in whatever form a legal tender of payment of a debt, of the particular amount specified in the cheque, may be made.

The cheque must contain the sum to be paid.

Formerly, a cheque for less than twenty shillings was absolutely void, and the uttering or negotiating such an instrument rendered a person liable to a penalty of 20*l.*, mitigable to 5*l.*; and it was an offence to utter a cheque on which less than twenty shillings remained due, under the 48 Geo. III. c. 88, s. 3. But by the 23 & 24 Vict. c. 111, s. 19, it is expressly provided that notwithstanding anything in any act of parliament contained to the contrary, it shall be lawful for any person to draw upon his banker, who shall *bonâ fide* hold money to or for his use, any draft or order for the payment to the bearer, or to order on demand, of any sum less than 20*s.* (*i*).

(*i*) See also 26 & 27 Vict. c. 105, s. 1. This restriction did not extend to cheques drawn upon a party's own banker in Ireland after the 8 & 9 Vict. c. 37, s. 28, or in a similar case in Scotland, after the 8 & 9 Vict. c. 38, s. 20.

A cheque must not be expressed in foreign money, as dollars, rupees, francs, rubles, &c., because it is no part of the banker's *implied* (*k*) contract with his customer nor of his duty of debtor, to pay the debt in any but the known and current money of England (*l*).

The money of account of England is expressed in pounds, shillings, pence and farthings; accordingly £ *s. d.* is taken in law to mean English money; pounds, shillings, pence; and not foreign money, as, *e. g.* livres, sous, deniers (*m*), and the word sterling means current money (*n*).

If the sum in the body of a cheque differs from that in the margin, the sum in the body is the sum which the banker ought to pay (*o*).

Hence, a cheque, in the body of which the sum was expressed only in figures, with the letters £ *s. d.* [thus, £100: 10*s.* 8*d.*] could not legally be refused payment by a banker having assets in his hands, and such a cheque, purporting to bear date at a place in France, and properly stamped and duly presented, would be valid and binding on all parties for the amount expressed in English money.

But to prevent mistakes, and to render frauds less easy, the form already given, in which the sum is twice stated, once in words, and a second time in figures, with the above letters attached, is the one in general use, and ought always to be adopted. For although the Court would prevent a merely obvious omission or slip from being turned to the prejudice of any one connected with the cheque, as, for instance, if a cheque was drawn for "twenty-five, seventeen shillings and three pence," it would be held to mean twenty-five pounds sterling, and seventeen shillings and

(*k*) Of course such a special contract may be made between a banker and a customer or other person, but the order for such payment would not be, it is conceived, a cheque in law. See Parker, R. 45.

(*l*) *Rastell v. Draper*, Yelv. 89; Moore, 775; Cro. Jac. 88.

(*m*) Per Abbott, C. J., in *Kearney v. King*, 2 B. & A. 303; and see *Sprout v. King*, 1 B. & C. 18; *Pierson v. Pointeys*, Yelv. 135.

(*n*) *Wiltshale v. Davidge*, 1 Leon. 41.

(*o*) *Sanderson v. Piper*, 5 Bing. N. C. 420.

three pence (*p*) ; yet in case of a fraudulent alteration of the cheque, if the question which of the two innocent parties, the drawer or the banker, is to bear the loss, arises, it must be answered by resolving the liability to be on that party whose conduct has in law opened the opportunity for the accomplishment of the fraudulent design ; and the loss must rest with one or the other accordingly.

The following instances may be referred to :—

A customer of a banker, on leaving home, entrusted to his wife several blank forms of cheques, signed by himself, and desired her to fill them up according to the exigency of his business. She filled up one with the words *fifty-two pounds two shillings*, beginning the word *fifty* with a small letter in the middle of a line. The figures 52 : 2 were also placed at a considerable distance to the right of the printed £. She gave the cheque thus filled up to her husband's clerk to get the money. He, before presenting it, inserted the words *three hundred* before the word *fifty*, and the figure 3 between the printed £ and the figures 52 : 2, so that it then appeared to be a cheque for £352 : 2s. It was presented, and the bankers paid it. And the Court of Common Pleas held, that the improper mode of filling up the cheque had invited the forgery, and therefore that the loss must fall on the customer, and not on the banker (*q*). Perhaps, however, it would not be safe, according to later cases, to rely on this decision as stating the law, except as applicable in precisely the same, or, at least, very closely analogous circumstances. Thus, if the cheque had been originally filled up for fifty-two pounds two shillings, as well as signed, in the customer's handwriting, the rest of the circumstances remaining the same, it would seem that as bankers have been held, in general, to be presumed to know their customer's handwriting, and what is not his

Fraudulent  
alteration of  
figures.

(*p*) *Phipps v. Tanner*, 5 C. & P. 488. A cheque, in which the order of the words is transposed, *e. g.*, "Pay A. B. seventeen or bearer pounds," is a cheque. *Reg. v. Boreham*, 2 Cox, C. C. 189.

(*q*) *Young v. Grote*, 4 Bing. 253 ; 12 Moore, 484.

handwriting (*r*), and to be liable, if they pay a cheque that is not genuine in all other respects, as well as the signature (*r*), they would have been bound to have taken notice that the words *three hundred* were not in the customer's handwriting, and that they ought to have made inquiries before cashing the instrument in those circumstances, and therefore, not having done so, were responsible (*s*).

If a man should lose his cheque book, or neglect to lock his desk in which it is kept, and a servant or a stranger should take it out, it is impossible to contend, the judges have said, that a banker paying his forged cheque would be entitled to charge his customer with that payment (*t*).

#### Stamping.

4. *That the Cheque is stamped.*—The Stamp Act, 1870 (*u*), per schedule, imposes a stamp duty of one penny upon every bill of exchange payable on demand, which term, by sect. 4, includes a draft, order, cheque and letter of credit, and any document or writing (except a bank note), entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned. A cheque, as already mentioned, is, in point of law, a bill of exchange payable on demand either to bearer or to order. This duty, called in sect. 50 the fixed duty of one penny, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the cheque is signed before he delivers it out of his hands, custody, or power; cheques may likewise be drawn on paper impressed with the penny

(*r*) See *per* Pollock, C. B., in *Bellamy v. Marjoribanks*, 21 L. J., Exch. 73; and *per* Bayley, J., in *Hall v. Fuller*, 5 B. & C. 750; *Coles v. Bank of England*, 10 A. & E. 449; *Ex parte Swan*, 7 C. B., N. S. 400; 7 H. & N. 603; in error, 2 H. & C. 175; *Swan v. North British Australasian Company*, 2 H. & C. 181; *Arnold v. Cheque Bank*, L. R., 1 C. P. D. 578; 45 L. J., C. P. 562; *Halifax Union v. Wheelwright*, L. R., 10 Exch. 183; 44 L. J., Exch. 121; 23 W. R. 704.

(*s*) *Orr v. Union Bank of Scotland*, 1 Macqueen, H. L. Cas. 513.

(*t*) *Bank of Ireland v. Trustees of Evans's Charities*, 5 H. L. Cas. 410.

(*u*) 33 & 34 Vict. c. 97.

stamp. The drawer, payee and banker will be liable to a penalty of 10% if the cheque is issued, negotiated or paid without being properly stamped. The 54th section of the statute enacts that, every person who issues, negotiates, presents for payment or pays any bill of exchange (which, of course, includes a cheque as before mentioned) liable to duty, and not being duly stamped, shall forfeit the sum of 10% ; and the person who takes or receives from any other person such bill, not being duly stamped, either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever. But if a cheque is presented to the banker unstamped, he will be entitled to affix an adhesive stamp to it, and charge the drawer's account with the payment. The enactment provides that, if any bill of exchange for the payment of money on demand, liable only to the duty of one penny, is presented for payment unstamped, the person to whom it is so presented may affix thereto a proper adhesive stamp, and cancel the same, as if he had been the drawer of the bill, and may, upon so doing, pay the sum in the said bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct such duty from the said sum : and such bill is, so far as respects the duty, to be deemed good and available. But it is added that this proviso is not to relieve any person from any penalty he may have incurred in relation to such instrument.

The former Stamp Act, 55 Geo. III. c. 184, Schedule, Part I., which was repealed in the year 1870 (*x*), exempted from stamp duties all drafts or orders for the payment of any sum of money to the bearer on demand, and drawn upon any banker or bankers, or any person or persons acting as a banker, who resided or transacted the business of a banker within ten miles, (altered to fifteen miles by

(*x*) By the Inland Revenue Repeal Act, 1870, 33 & 34 Vict. c. 99.

9 Geo. IV. c. 49, s. 15,) of the place where such drafts or orders were issued: provided such place was specified in such drafts or orders, and provided they bore date on or before the day on which the same were issued; and provided the same did not direct the payment to be made by bills of exchange or promissory notes; and imposed specific penalties for issuing cheques in contravention of its provisions. The 16 & 17 Vict. c. 59, first imposed a penny stamp duty upon drafts or orders for the payment of any sum of money to the bearer, or to order on demand, and exempted drafts or orders if drawn within fifteen miles of the place of payment, and afterwards the 21 & 22 Vict. c. 20 repealed this exemption. It is unnecessary now to specify on the cheque the place where drawn.

Post-dating.

The 55 Geo. III. c. 184, s. 13, prohibiting "the making or issue of any bill, draft or order for the payment of money to the bearer on demand upon any banker, which *shall be dated on any day subsequent to the day on which it shall be issued,*" has been repealed. The restriction as to post-dating cheques having been repealed, and the stamp duties on bills of exchange, with the exception of those payable on demand and at sight, being now ad valorem, and not regulated according to long or short dates, it follows that post-dated cheques, whether payable to bearer or to order, are legal, valid, and unimpeachable instruments (y).

Cheques exempted from stamp duty.

*Cheques exempted from Stamp Duty.*—The Stamp Act, 1870, exempts any draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers; any letter written by a banker in the United Kingdom to any other banker in

(y) Fisher's Stamp Acts of 1870, 1871, pp. 46, 47. See *Gatty v. Fry*, L. R., 2 Ex. D. 265; 46 L. J., Ex. 605; 36 L. T. 182; 25 W. R. 305. The former law, and the cases on post-dating cheques, are not retained in the present edition, but a full summary thereof is to be found in that of 1876, to which, if necessary, the reader must be referred.

the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf; and all drafts or orders drawn by the Accountant-General of the Court of Chancery in England or Ireland, from all stamp duty. Since the above act, the Paymaster-General is substituted by 35 & 36 Vict. c. 44, for the Accountant-General of the Court of Chancery in England. But cheques given by benefit building societies to their members on withdrawal of their shares, or for interest, are not exempt under 6 & 7 Will. IV. c. 32 (z).

5. *That the Cheque be made payable to Bearer, or to Order, on Demand.*—A cheque may be either payable to bearer or to order. When payable to bearer, by the nearly universal practice as regards bankers' cheques a name is inserted, as of a person in whose favour the cheque is drawn; and the convenience of this is obvious, for, by inserting the name or the word "self," and then adding "or bearer," either the payee in person, or any one to whom he may deliver the cheque, is competent to receive the cash for it, and the banker is bound to pay it. A cheque payable to Mr. A. B. without the words "bearer" or "order," is only payable to the particular person named, and he must himself go to the banker to get it cashed.

Cheques payable to bearer or to order.

That it is not indispensable to name an individual is shown by this, that a cheque drawn thus, "Pay ship *Fortune*, or bearer," is valid, and may be sued upon by the bearer (a).

It will be observed that a cheque is required by the Stamp Act, 1870, to be payable on demand; it does not, however, follow that it need contain the words *on demand* on the face of it; for if payable to bearer or to

(z) *Att.-Gen. v. Gilpin*, 40 L. J., Exch. 134; L. R., 6 Exch. 193.

(a) *Grant v. Faughan*, 3 Burr. 1527; *Gibson v. Minet*, 1 H. Bl. 609.

order, that makes it in law payable on demand (*b*). And the addition of these words by the holder, without the knowledge or consent of the drawer, will not vitiate the cheque, as they only express what the law implies (*c*).

A cheque payable to bearer may be indorsed, and entitle the indorsee or a subsequent holder, to sue the indorser thereon (*d*). A payee, however, writing his name on the back of a cheque, as an acknowledgment of payment, is not such an indorsement as subjects him to any liability.

A cheque payable to order, when indorsed in blank, becomes payable to bearer. This class of cheques has been described as being the statutablely privileged class of drafts, as will be evident by the following provision (*e*).

Liability of  
banker on  
cheques pay-  
able to order.

*As to Cheques payable to Order on Demand.*—By the 16 & 17 Vict. c. 59, s. 19, it has been enacted, that any draft or order drawn upon a banker for a sum of money payable to order on demand, which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable, either by the drawer or any indorser thereof (*f*). By 35 & 36 Vict. c. 44, the

(*b*) *Hare v. Copland*, 13 Ir. Com. Law Rep. 426.

(*c*) *Aldous v. Cornwall*, 9 B. & S. 607; 37 L. J., Q. B. 201.

(*d*) *Keene v. Beard*, 8 C. B., N. S. 372; 29 L. J., C. P. 287.

(*e*) *Per Christian, J.*, in *Hare v. Copland*, 13 Ir. Com. Law Rep. 430.

(*f*) Notwithstanding this statute, however, it would probably not be safe for bankers to pay a cheque, purporting to be drawn by a customer and to be indorsed by the payee, without ascertaining the genuineness of both signatures, *if the customer had at the time of the presentment and payment no funds in their hands*; for it has been held in the analogous case of a bill, accepted by a customer payable at his bankers, that they were liable on paying the bill for his honour, not having funds, and could not recover

Court of Chancery Funds Act, 1872, s. 11, the provisions of the statute are extended to documents issued by the paymaster-general for the payment of money to suitors.

This section only protects the banker, and not a third party who cashes such cheque; and if the indorsement of the name of the payee to whose order it was made payable is a forgery, such third person will be liable to refund the amount of it to the true owner (*g*). But mere negligence in the custody of a draft, or in its transmission by post, will not disentitle the owner of it to recover the draft or its proceeds from one who has wrongfully obtained possession of it. Negligence to amount to an estoppel must be on the transaction itself, and be the proximate cause of leading the third party into mistake, and also must be the neglect of some duty, which is owing to such third person or to the general public (*h*). Thus, the plaintiffs, merchants at New York, desiring to transmit £1,000 to W. & Co., of Bradford, purchased of

from the customer, not having taken means to ascertain the correctness of the acceptance and indorsement. *Forster v. Clements*, 2 Camp. 17. The statute does not appear to alter the principle of this decision as applicable to cheques, as it turns on the circumstance that the bankers, in the absence of funds of their customers, are not bound to pay the bill, and therefore, if they choose to do so, they act under peril of being responsible, in case the instrument turns out to be vitiated by fraud or forgery. The statute can only be taken, it is submitted, to relieve bankers from the necessity of ascertaining the genuineness (so as to be able to prove it at the trial) of the payee's indorsement, and in cases where, independent of any consideration of the indorsements, they would be bound to pay the cheque. The statute may be considered as saying, "If, given the genuineness of the payee's indorsement, &c., you would by the law, and by the usage of bankers, be bound to pay, there you shall be relieved from the necessity of proving the payee's indorsement, &c., and shall be entitled to have the benefit of such a payment, on showing an indorsement purporting to be that of the payee." But, in the case above stated, the bankers would not be bound to pay a cheque, without first having funds of the person purporting to be drawer in their hands, and without, secondly, being satisfied, and therefore able to show, that a person purporting to be the drawer, and having funds in their hands, actually drew the cheque presented and paid. [The above paragraph appeared in the text of the first edition of this work, and is retained in a note, for although the law, which it contains, may be questionable, the point discussed has not been judicially decided.]

Liability of  
banker pay-  
ing cheque  
for honour of  
drawer.

(*g*) *Ogden v. Benas*, L. R., 9 C. P. 513; 43 L. J., C. P. 259; *Arnold v. Cheque Bank*, L. R., 1 C. P. D. 578; 45 L. J., C. P. 562; *Bobbet v. Pinkett*, L. R., 1 Ex. D. 368; 35 L. J., Exch. 555.

(*h*) *Arnold v. Cheque Bank*, supra.

S. & Co. in New York, a draft for that amount drawn by S. & Co. on Smith, Payne & Co., London, payable to the order of the plaintiffs on demand. The plaintiffs indorsed the draft specially to W. & Co. or order, and inclosed it in a letter addressed to them, which was placed in a letter-box in their office to be posted in the usual way. The letter was stolen by one Hecht, a clerk, in the employ of the plaintiffs, who forged an indorsement of W. & Co., and procured the defendants, bankers in London, to present the draft and obtain the money, which was placed by them to the account of a person acting in concert with Hecht, upon whose cheques the money was almost immediately drawn out. In an action for money had and received, the defendants, in order to show that the negligence of the plaintiffs in the custody and transmission of the draft afforded facilities for the fraud, and so estopped them from suing for the money, tendered evidence that it was an usual and almost invariable practice amongst merchants sending large remittances from abroad to send, besides the letter containing the remittance, a letter of advice by the same or next mail. This evidence was rejected, on the ground that the alleged negligence was collateral only to the transaction giving rise to the action:—Held, that the plaintiffs' right to the draft, and to sue for the proceeds thereof in the hands of the defendants as money received to their use, was not affected by the felonious act of Hecht; and that the evidence tendered was properly rejected (*i*).

An indorsement purporting to be by the agent of the person to whose order the cheque is payable is within the act. S. K., an agent of S. & Co., the plaintiffs, having authority to sell goods for them and to receive payment by cash or cheque, but not having authority to indorse cheques, received from the defendants, in payment for goods supplied, a cheque on their bankers drawn payable to S. & Co., or order. S. K. indorsed it S. & Co., per S. K., agent, received the money from the bankers, and

(i) *Arnold v. Cheque Bank*, *supra*.

misappropriated part of it. The bankers returned the cheque to the defendants, and the amount was allowed in account by the defendants:—Held (affirming the decision of the Common Pleas Division), that such payment by the bankers was within the protection of 16 & 17 Vict. c. 59, s. 19; and that the plaintiffs could not maintain an action against the defendants; either for the price of the goods or for the cheque (*k*). Bankers in London resolved in 1868 to pay cheques indorsed by procuration, except in special cases, without guarantee, and they have followed this practice to the present time.

5. *The Cheque must bear the Drawer's Signature.*—Signature does not necessarily mean subscription, or writing the full name at the foot of the document; if the name appears in any part of the cheque, so as to show who it is that orders the payment, that will be sufficient to authorize the bankers to pay, provided the handwriting is that of their customer of the name stated. For the reason of requiring signature will be thus satisfied; for adequate means of identification by the handwriting will be afforded (*l*).

Cheque to  
bear drawer's  
signature.

Thus a cheque would be good which, instead of being subscribed with the name of the drawer, as in the form above given, was expressed thus:—"I, John Stiles, desire you to pay," &c.; and was properly addressed, &c.; or thus: "Mr. Stiles desires Messrs. Holdfast to pay," &c.; for in either case, being written by the person drawing, the cheque would contain sufficient means of identification.

An illiterate person must draw a cheque, by placing his mark, in the usual place of writing a name and style, on a cheque, the body of the cheque being filled up in the usual manner (*m*).

Marksmen.

(*k*) *Charles v. Blackwell*, 2 C. P. D. 151; 46 L. J., C. P. 368.

(*l*) *Taylor v. Dobbins*, 1 Strange, 399; *Saunderson v. Jackson*, 2 B. & P. 238.

(*m*) *Per Maule, J.*, in *Serrell v. Derbyshire, &c. Railway Company*, 19 L. J., C. P. 373; 9 C. B. 827.

Infants.

*Who may be drawer—Infants.*—An infant cannot draw or sign a valid cheque; in other words, a banker cashing the cheque of an infant, is not thereby discharged; for a person under age cannot draw a cheque, for he cannot give a legal discharge (*n*).

Executors and administrators.

*Executors and Administrators.*—Executors, however numerous, are regarded in law as an individual person; and therefore the acts of one of them, in respect of the administration of the effects, are deemed to be the acts of all. Hence payment to one is payment to all; and it follows that if a number of executors has a fund standing in their joint names at a banker's, payment of a cheque signed by one of the executors will discharge the banker as to all of them (*o*). So it would be, although the executors were acting under a forged will (*p*).

So a payment of the cheque of any of several administrators, made *bonâ fide*, would discharge the banker, although a will should afterwards be found (*q*).

So a payment of the cheque of a surviving administrator of several, exonerates the banker: in a case where such survivor drew out a fund and absconded, the loss fell on the estate of the deceased administrator (*r*).

Trustees of bankrupts.

*Trustee in Bankruptcy.*—Under the Bankruptcy Act, 1869, a single trustee now represents the interests of the creditors, and to whom, when appointed, all property of a bankrupt passes. A banker, therefore, having in his hands funds of the bankrupt, is justified in paying the same to the trustee. The creditors may, by sect. 83 (1), if they think fit, appoint more persons than one to the office of trustee, and where more than one is appointed, they shall declare whether any act required or authorized to be

(*n*) See *per* Lord Abinger, C. B., in *Calland v. Lloyd*, 6 M. & W. 31.

(*o*) *Ex parte Rigby*, 19 Ves. 462; *Can v. Read*, 3 Atk. 695.

(*p*) *Allen v. Dundas*, 3 T. R. 125.

(*q*) *Pond v. Underwood*, 2 Ld. Raym. 1210; *Prosser v. Wagner*, 1 C. B., N. S. 289.

(*r*) *Clough v. Bond*, 3 M. & C. 490. See 20 & 21 Vict. c. 77, ss. 77, 78.

done by the trustee is to be done by all or any one or more of them, but all shall be joint tenants of the property of the bankrupt.

*Agent.*—An agent, though unauthorized to draw or indorse cheques in the name of his principal, can nevertheless bind his principal by doing so, provided the drawing and indorsing of cheques is incidental to the business he is deputed to transact, and provided the party dealing with him has no notice of want of authority (*s*).

An authority to draw does not of itself imply an authority to indorse (*t*). But where a confidential clerk is accustomed to draw cheques on his principal's account, and has on occasion, at least, been authorized to indorse and to receive money obtained by such indorsement in their name, a jury is warranted in inferring that the clerk had a general authority to indorse (*u*).

An agent is personally liable on a cheque drawn or indorsed by him, unless he signs it in such a manner that it appears, on the face of it, to be drawn or indorsed by him only as agent for another (*x*).

If a person signs a bill or note in the name of another, without that other's authority, though, it would seem, he does not render himself liable to an action on the bill or note, he may, nevertheless, be sued on the implied contract, that he had the authority he so represented himself as possessing (*y*); and if he has been guilty of fraud, an action for fraudulent misrepresentation will also lie (*z*).

*Married Women.*—A married woman cannot deposit money (other than that belonging to her as her separate

(*s*) See *Howard v. Baillic*, 2 H. & Bla. 618; *Davidson v. Stanley*, 2 M. & G. 721; *Edmunds v. Bushell*, L. R., 1 Q. B. 97; *Beveridge v. Beveridge*, L. R., 2 Sc. App. 183; *Hogarth v. Whaley*, L. R., 10 C. P. 630.

(*t*) *Robinson v. Yarrow*, 7 Taunt. 455.

(*u*) *Prescott v. Flinn*, 9 Bing. 19.

(*x*) *Leadbitter v. Farrow*, 5 M. & G. 345; *Alexander v. Sizer*, L. R., 4 Ex. 105; *Mare v. Charles*, 25 L. J., Q. B. 119; *Dutton v. Marsh*, L. R., 6 Q. B. 361.

(*y*) *Randall v. Trimen*, 15 C. B. 786; *Collen v. Wright*, 7 E. & B. 647; *Kelner v. Baxter*, L. R., 2 C. P. 151.

(*z*) See *Kelner v. Baxter* and *Collen v. Wright*, *supra*.

estate) with a banker and draw cheques thereon, except as agent or with the implied assent of her husband; and the only effect of opening the account in the name of the wife alone is to show that the contract which the husband makes with the bank is a contract that they shall honour the cheques of the wife, so that supposing the wife drew a cheque, and the bankers refused to honour it, and an action was brought against them for doing so, the action could only be brought in the name of the husband (*a*). Money, however, deposited in a bank by a husband in the joint names of himself and his wife to be a provision for her in case of his death, will upon his death become the absolute property of his wife (*b*), though if the deposit is made with no such intention, but only for the sake of convenience, it is otherwise (*c*). A married woman having separate estate may charge it and render it liable by bills and promissory notes, and also by her general contracts, provided such contracts were made with reference to, and upon the faith or credit of that estate (*d*). But such engagements can be enforced only against so much of the separate estate to which she was entitled, free from any restraint on anticipation, at the time when the engagements were entered into, as remains at the time when judgment was given (*e*). Where the husband and wife live apart the Court will impute to her an intention to deal with her separate estate unless the contrary is clearly proved (*f*). On the other hand, the presumption is all the other way where they live together, and the onus of proving such an intention is thrown upon the creditor (*g*).

(*a*) See *Lloyd v. Pugh*, L. R., 8 Ch. App. 88; 42 L. J., Ch. 282; 28 L. T. 250.

(*b*) *Williams v. Davies*, 33 L. J., Prob. 127.

(*c*) *Marshall v. Crutwell*, L. R., 20 Eq. 331; 44 L. J., Ch. 504.

(*d*) *Johnson v. Gallagher*, 3 D., F. & J. 494; *Mathewson's case*, L. R., 3 Eq. 781; *Davies v. Jenkins*, L. R., 6 Ch. D. 728; 46 L. J., Ch. 761.

(*e*) *Pike v. Fitzgibbon*, 17 Ch. D. 454; *Smith v. Lucas*, 18 Ch. D. 531. A creditor who has contracted with a married woman on the faith of her separate estate cannot touch it till he has got judgment against her. *Robinson v. Pickering*, 16 Ch. D. 660.

(*f*) *Johnson v. Gallagher*, *supra*; *Picard v. Hine*, L. R., 5 Ch. 274.

(*g*) *Bromley v. Norton*, 21 W. R. 155.

A married woman, so far as her separate estate is concerned, may thus open and keep a banking account, and make binding contracts with her banker respecting it (*h*). By the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), sect. 1, the wages and earnings of a married woman earned independently of her husband, and money or other property acquired by any artistic, literary, or scientific skill, and all investments thereof, are deemed to be the property held and settled to her separate use, for which her receipt alone shall be a good discharge (*i*). By section 7 it is enacted, that where any woman, married after the passing of the act, shall succeed to any personalty as next of kin, or take any sum of money not exceeding 200*l.* under any will or deed, the same shall belong to her for her sole and separate use (*j*). A married woman, moreover, by section 11, is empowered to maintain an action in her own name, to recover property declared by that act to be separate property, or any property belonging to her before marriage, which her husband has agreed shall belong to her as her separate estate, and generally has conferred upon her the same civil and criminal remedies as are possessed by a feme sole. Under this latter section a married woman has been held to be entitled to an action against a banker for not honouring a cheque drawn upon her separate estate deposited with him (*k*).

*Trustees.*—In the case of trustees in general, or any other body of persons not being in partnership, having

(*h*) *The London Chartered Bank of Australia v. Lempriere*, L. R., 4 P. C. 572; 42 L. J., P. C. 49.

(*i*) Under this section, see *Ashworth v. Outram*, L. R., 5 Ch. D. 743; 46 L. T. 687; 25 W. R. 896; *Thompson v. Bennet*, 6 Ch. D. 739; 46 L. T. 803; 25 W. R. 862; *Lovell v. Newton*, 4 C. P. D. 7; 27 W. R. 366; *Duncan v. Cashin*, 10 C. P. 554; 44 L. J., C. P. 396; *Lumley v. Timms*, 28 L. T. 608; 21 W. R. 494; *In re Tharp*, 3 Ch. D. 59; 35 L. T. 293.

(*j*) See *In re Brymer*, 24 L. T. 263; see also *London Chartered Bank of Australia v. Lempriere*, *supra*; *Lloyd v. Pughe*, 14 L. R., Eq. 241; *Green v. Carhill*, 4 Ch. D. 882; 46 L. J., Ch. 477.

(*k*) *Summers v. City of London Bank*, L. R., 9 C. P. 580; 43 L. J., C. P. 261; see, also, on this section, *Roberts v. Evans*, 7 Ch. D. 830; 47 L. J., Ch. 469; *Hancock v. Lablache*, 3 C. P. D. 197; 47 L. J., C. P. 514.

deposited money to their joint account with bankers, the latter are, by the nature of the relation between banker and customer, as regulated by the usage of banking, entitled to have assurance that each of the trustees, or each of the body of persons, assents to and authorizes the money being paid out, and therefore, in such case, the law is that each trustee, or each of the body, must sign the cheque (*l*), or the bankers may refuse to pay it; for they will not be discharged if they do pay it, except where, subsequently to the deposit, the drawer has become alone entitled to receive the money (*l*).

Where one of such trustees has absconded, so that his signature cannot be obtained, equity will relieve by making an order that the bankers shall pay the cheque of the remaining trustees (*m*).

#### Partners.

*Partners.*—In the case of partners having a joint account with a banker.

“There is no doubt but that the act of every single partner in a transaction relating to the partnership binds the others,” where there is no collusion or *crassa negligentia* on the part of those in whose favour the act is done (*n*).

Therefore, in the absence of any special agreement, fixing the mode in which cheques should be drawn upon the partnership fund, in his hands, the banker would be bound to honour cheques (not post-dated) drawn in the partnership name (*o*), but not otherwise (*p*).

If the name of the firm is inaccurately stated, it would seem that the banker ought not to cash the cheque without inquiry; for such a defect would probably be considered by a jury as sufficient to awaken the suspicion of a prudent

(*l*) *Innes v. Stephenson*, 1 M. & Rob. 145; *Husband v. Davis*, 10 C. B. 640; *Stone v. Marsh*, R. & M. 364; *Lee v. Stewart*, M. & M. 160.

(*m*) *Ex parte Hunter*, 2 Rose, 363; 1 Mer. 408.

(*n*) *Per Lord Mansfield*, C. J., *Hope v. Cust*, 1 East, 53.

(*o*) *Forster v. Mackreth*, L. R., 2 Ex. 163; Byles, 44.

(*p*) *Kirk v. Blurton*, 9 M. & W. 284; *Emily v. Lye*, 15 East, 7; *Nicholson v. Ricketts*, 29 L. J., Q. B. 55.

man, unless it were shown that such departure from the proper style was habitual on the part of the member of the firm in whose handwriting the cheque had the appearance of being drawn, or unless it were agreed upon, between the banker and the partnership, that he should honour cheques so drawn (o).

If the name of a partnership firm be merely the name of an individual partner, proof that he signed such name to a bill of exchange is not enough to make the firm liable on the bill. To establish the liability, the holder of the bill must further prove that the signature was put to it by the authority and for the purposes of the firm (p). A partner has no implied authority to bind his firm by issuing acceptances in blank (q).

A question, however, may arise, whether one partner could not bind the partnership, by signing, under the general authority conferred by the partnership, the names of all the partners, though the style of the firm did not consist of those names (r).

Where accounts are kept at a bankers by a firm, each partner having a right to draw cheques, and also by the individual partners of the firm, it is not the duty of the bankers to inquire into the propriety of any transfer of funds which may be made from and to the different accounts (s).

Upon the death of one partner in a firm, having an account at a bankers, the surviving partner has a right to draw cheques upon the partnership account (s).

If one of two partners opens an account with a bank in his own name, this is not conclusive to show the account to

(o) See *Kirk v. Blurton*, 9 M. & W. 284; *Sheppard v. Dry*, Byles on Bills, 41, n. (8th ed.); per Tindal, C. J., *Bawden v. Howell*, 3 M. & G. 641; *Wintle v. Crowther*, 1 C. & J. 310.

(p) *Yorkshire Banking Company v. Beatson*, L. R., 4 C. P. D. 204; 48 L. J., C. P. 428; 40 L. T. 654; 27 W. R. 911.

(q) *Hogarth v. Latham & Co.*, L. R., 3 Q. B. D. 643; 47 L. J., Q. B. 339; 39 L. T. 75; 26 W. R. 388.

(r) Per Maule, J., *Norton v. Seymour*, 3 C. B. 792, 794; *Hogarth v. Latham*, *supra*.

(s) *Backhouse v. Charlton*, 8 Ch. D. 444.

be his solely; the banker may prove that the partner was acting as agent for the firm, in so opening the account; but the mere fact of the money deposited being partnership property is not sufficient to show this, in an action by the other partner for dishonouring his cheque (*s*).

There is no implication of law from the mere existence of a trade partnership, that one partner has authority to bind the firm by opening a banking account on its behalf in his own name (*t*).

What has been said respecting partners signing cheques relates only to persons who are known to the bankers to be members of the firm, and not to partners who are not so known; for a banker would not be bound to honour the cheque of a dormant partner, whom he was ignorant to be jointly interested in the fund with the others, although he were satisfied of the genuineness of the signature, and he could not, therefore, safely do so until he had got the authority of the firm (*u*).

The name in the pass-book is not conclusive that the bankers contracted with that person *alone* (*v*).

Where two houses of business are partners in a particular transaction, and have a joint sum to the account of the transaction in the hands of a bank, payment of the cheque of one house, out of that fund, is payment to both (*w*).

#### Corporations.

*Corporations.*—When a corporate body has a deposit at bankers, it is in accordance with strict principles to lay down, that the bankers would not, at common law, be discharged by payment of a cheque that was not under the common seal, or signed by some officer of the corporation, whose signature the bankers were authorized to honour, by authority expressly given in an instrument under the common seal; but in most cases of statutory corporations

(*s*) *Cooke v. Seeley*, 2 Exch. 746.

(*t*) *Alliance Bank v. Kearsley*, L. R., 6 C. P. 433; 40 L. J., C. P. 249.

(*u*) See *per Parke, B.*, *Cooke v. Seeley*, 2 Exch. 749.

(*v*) *Sims v. Bond*, 5 B. & Ad. 389.

(*w*) *Collyer on Partnership*, 455.

power is given to three directors, or to a finance committee, or to other officers or persons designated in the act, to draw and sign cheques, &c. In such cases the cheques ought to bear the signature (and, where that is required, the counter-sign) of all the parties designated (z).

“A banker,” it has been said, “dealing with a com- Companies.  
pany must be taken to be acquainted with the manner in which, under the articles of association, the monies of the company may be drawn out of his bank for the purposes of the company . . . and the banker must also be taken to have had knowledge, from the articles, of the duties of the directors, and the mode in which the directors were to be appointed. But after that, when there are persons conducting the affairs of the company in a manner which appears to be perfectly consonant with the articles of association, then those so dealing with them, externally, are not to be affected by any irregularities which may take place in the internal management of the company. They are entitled to presume that that of which only they can have knowledge, viz., the external acts, are rightly done, when those external acts purport to be performed in the mode in which they ought to be performed” (a).

So, bankers who have funds of a company (formed under the Companies Act, 1862) in their hands may (acting *bonâ fide*) lawfully honour the cheques of the directors of the company, signed according to a form sent by them to the bank, without being bound, previously, to inquire whether the persons intending to sign as directors have been duly appointed to office, in conformity with the provisions of the memorandum and articles of association: thus,—

W., in concert with some friends and dependents of his,

(z) See *Serrell v. Derbyshire Railway Company*, 19 L. J., C. P. 371; *Halford v. Cameron Coalbrook Company*, 16 Q. B. 442.

(a) Per Lord Hatherley in *Mahoney v. The East Holyford Mining Company*, L. R., 7 H. L. 869, 894; 33 L. T. 383. See *Royal British Bank v. Turquand*, 6 E. & B. 327; *Fountain v. Carmarthen Railway Company*, L. R., 5 Eq. 316.

started a company called a mining company. The memorandum and articles of association were registered. Subscriptions were obtained from persons becoming shareholders, and these subscriptions were paid into a bank, which had been described in the prospectuses of the company, as the bank for the company. The bankers received a formal notice, signed by the person who described himself as the secretary of the company, that they were to pay the cheques signed by "either two of the following three directors," and countersigned by himself, in accordance with a "resolution passed this day;" and the names of the three persons described as directors, and their signatures, were inclosed with the "resolution." The bankers from time to time, while the business of the company appeared to be going on, received cheques signed and countersigned as described, and duly honoured them. When the fund had been almost entirely drawn out, the company was ordered to be wound up. It then appeared that there never had been a meeting of shareholders, nor any appointment of directors or of a secretary, but that the persons who had got up the company had treated themselves as directors and secretary and appropriated the money obtained from the subscriptions:—Held, that the official liquidator could not recover from the bankers the amount of the cheques which, under the circumstances disclosed in the case, they had thus *bonâ fide* paid; and, also, that where those who draw and those who *bonâ fide* honour cheques intend them to operate on a certain account, no objection can afterwards be taken that that account is not specifically mentioned on the face of the cheques (*b*).

A direction given by persons who are directors of a company to their bankers, when the company had a balance in the hands of the bankers, to honour cheques drawn and signed in a particular manner, does not of itself impose upon the directors any personal responsibility as to those

(*b*) *Mahoney v. The East Holyford Mining Company*, L. R., 7 H. L. 869.

cheques. This direction is in no sense a misrepresentation, so as to make those who gave it personally liable to those who acted upon it.

Nor, though that the direction should continue to be acted on by the bankers after the company's account has been overdrawn, will it entail on the directors who gave it any personal liability. Nor will it entail any such liability on those who, at a subsequent meeting of the board of directors, confirmed the minutes of the board meeting at which it was given, and who drew cheques in accordance with it, though the account was overdrawn when these latter cheques were issued and honoured (c).

By the Companies Act, 1862, s. 41, every company having its liability limited, either by shares or by guarantee, shall have its name mentioned in legible characters on all cheques or orders for money, purporting to be signed by or on behalf of such company; and by sect. 42, if any director, manager or officer of such company, or any person on its behalf, signs, or authorizes to be signed, on behalf of such company, any cheque or order for money, wherein its name is not so mentioned, he shall be liable to a penalty of 50*l.*, and shall further be personally liable to the holder of such cheque, or order for money, for the amount thereof, unless the same is duly paid by the company.

(c) *Beattie v. Lord Ebury*, L. R., 7 H. L. 102; 44 L. J., Ch. 20; 30 L. T. 581; 22 W. R. 897.

## CHAPTER III.

## MODE OF PAYMENT OF CHEQUES.

In what coin  
or notes pay-  
able.

*In what Coin or Notes may Cheques be legally paid by Bankers.*—For a cheque not exceeding in amount forty shillings a tender of payment in silver is good (a).

Legal tender.

(a) The Coinage Act, 1870, 33 Vict. c. 10, s. 4, enacts that a tender of payment of money, if made in coins which have been issued by the Mint in accordance with the provisions of this act, and have not been called in by any proclamation made in pursuance of this act, and have not become diminished in weight, by wear or otherwise, so as to be of less weight than the current weight, that is to say, than the weight (if any) specified as the least current weight in the first schedule to this act, or less than such weight as may be declared by any proclamation made in pursuance of this act, shall be a legal tender—

In the case of gold coins for a payment of any amount :

In the case of silver coins for a payment of an amount not exceeding 40s., but for no greater amount :

In the case of bronze coins for a payment of an amount not exceeding 1s., but for no greater amount :

Nothing in this act shall prevent any paper currency, which under any act or otherwise is a legal tender, from being a legal tender.

Prohibition of  
other coins  
and tokens.

By s. 5, no piece of gold, silver, copper or bronze, or of any metal or mixed metal, of any value, shall be made or issued, except by the Mint, as a coin or a token of money, or as purporting that the holder thereof is entitled to demand any value denoted thereon.

Contracts,  
&c. to be  
made in  
currency.

By s. 6, every contract, sale, payment, bill, note, instrument and security for money, and every transaction, dealing, matter and thing whatsoever relating to money, or involving the payment of or the liability to pay any money, which is made, executed or entered into, done or had, shall be made, executed, entered into, done and had, according to the coins which are current and legal tender in pursuance of this act, and not otherwise, unless the same be made, executed, entered into, done or had according to the currency of some British possession or some foreign state.

Defacing  
light gold  
coin.

By s. 7, where any gold of the realm is below the current weight as provided by this act, or where any coin is called in by any proclamation, every person shall, by himself or others, cut, break or deface any such coin tendered to him in payment, and the person tendering the same shall bear the loss. If any coin cut, broken or defaced in pursuance of this section is not below the current weight, or has not been called in by any proclamation, the person cutting, breaking or defacing the same shall receive the same in payment according to its denomination. Any dispute that may arise under this section may be determined by a summary proceeding.

Defacing  
gold, silver or  
copper coin.

The former Coinage Act, 56 Geo. III. c. 63, is repealed by this act.

By 24 & 25 Vict. c. 99, s. 7, no tender of payment in money made in gold, silver or copper coin, defaced by being stamped with any name or words thereon, whether such coin shall or shall not be thereby diminished or lightened, shall be allowed to be a legal tender.

Above forty shillings, and up to and including 5*l.*, gold appears to be the only legal tender; for it is only in case of sums above 5*l.* that Bank of England notes are at present a legal tender.

With respect to sums above 5*l.*, the following is the subsisting law:—By 3 & 4 Will. IV. c. 98, s. 6, a tender of a note or notes of the Bank of England, expressed to be payable to bearer on demand, shall be a legal tender to the amount expressed in such note or notes, and shall be taken to be valid as a tender to such amount, for all sums above 5*l.*, on all occasions on which any tender of money may be legally made, so long as the Bank of England shall continue to pay on demand their notes in legal coin; provided always, that no such note or notes shall be deemed a legal tender of payment by the governor and company of the Bank of England, or any branch bank of the governor and company; but the governor and company are not to become liable or be required to pay and satisfy at any branch bank of the governor and company any note or notes of the governor and company not made specially payable at such branch bank; but the governor and company shall be liable to pay and satisfy at the Bank of England in London all notes of the governor and company, or of any branch thereof.

By 8 & 9 Vict. c. 38, s. 15, which was passed for the purpose of removing doubts as to the extent of the operation of 3 & 4 Will. IV. c. 98, the notes of the Bank of England were declared not to be a legal tender in Scotland, although they may circulate in Scotland. So, by 8 & 9 Vict. c. 37, s. 6, Bank of England notes were declared not to be a legal tender in Ireland, although there is nothing to prohibit their circulation in that country.

Therefore a cheque for 100*l.* may be cashed at any bank but the Bank of England or one of its branch banks, in the following manner, without the banker incurring liability, for refusing to honour the cheque or otherwise.

He may pay 40*s.* in silver; he may and must pay the next 3*l.* in gold; the remaining 95*l.* he may pay in gold or in Bank of England notes "expressed to be payable to bearer on demand," which therefore must not be made specially payable at a branch bank, it is apprehended, but must be the ordinary Bank of England notes, payable at the Bank of England in London, otherwise the payee of the cheque might refuse them, and the drawer might recover damages in an action against the banker for refusing to honour his cheque.

A depositor's cheque must be paid at the Bank of England, or one of its branch banks, in gold, for sums above 40*s.*, if he insists upon it, provided the whole amount demanded above 40*s.* can be expressed in gold coin; thus, 2*l.* 10*s.* can be paid with a half sovereign and 40*s.* in silver; 2*l.* 5*s.* with a half sovereign and 35*s.* in silver.

If the above statement be correct, it will follow that a customer who draws a cheque for 100*l.* on his banker, or the bearer, can only demand 3*l.* of it to be paid in gold; and so of any cheque for a greater sum than 100*l.*; and the same is obviously the case of any smaller sum down to 5*l.*, and so *mutatis mutandis* of sums under 5*l.* and above 40*s.* The almost uniform custom of bankers to consult the pleasure of the payee or bearer, as to how he wishes to have the cash paid over to him, is merely a matter of courtesy, and in no respect, except as above mentioned, obligatory on them.

In forged  
bank notes.

But if the cheque is cashed in *forged* Bank of England notes the payment is a nullity (*b*); and the law appears to be that, in strictness, the drawer might recover damages from the banker for dishonouring his cheque, although the banker was ignorant when he tendered the bank notes that they were spurious; for the payee

(*b*) See *per* Littledale, J., in *Camidge v. Allenby*, 6 B. & C. 385.

of the cheque may certainly treat the debt due to him from the drawer as unpaid, and may recover it from him; and consequently the drawer may recover from the banker according to the rule already stated, that when a loss must fall upon one of two innocent parties, the sufferer must be the party whose conduct has most immediately led to it; and here the banker is guilty of laches and negligence in not ascertaining the genuineness of the bank notes before he tenders and passes them.

As there is no privity between the bearer and the banker, and the former is merely the hand into which the banker is directed by the drawer to pay the debt which the banker owes to him (the drawer), and the order of the drawer cannot operate to make the banker debtor to the bearer, of course the bearer cannot sue the banker for non-payment, unless in an unusual case of the banker's accepting the instrument (c).

*In Country Bank Notes subsequently dishonoured.*—With respect to country bank notes, since they form no part of the currency, the payee's choice of taking or refusing them is absolutely free; and he must be taken to have known (what is quite possible) that the country bank may have stopped payment before they can be presented. If, therefore, the payee elects to take them as cash, he must be held to have chosen to bear the risk that attaches to them, and the banker, if he has made no improper representations to induce the payee to receive them, and did not know at the time when he tendered them in payment that for any reason they were worthless, or likely to be so, by the time they could be presented at the country bank for payment, will be absolved from further liability (d).

(c) *Bellamy v. Marjoribanks*, 21 L. J., Ex. 77; 7 Exch. 389.

(d) See *The Guardians of the Poor of the Lichfield Union v. Greene*, 26 L. J., Ex. 140; *Smith v. Mercer*, L. R., 3 Ex. 51.

In counterfeit  
coin.

*Counterfeit Coin.*—Similarly, in case the banker innocently makes the payment in bad coined money, the payee taking it in payment without objection at the moment, that is before the transaction of the presentment and payment can be considered as fairly at an end, cannot afterwards complain, and must bear the loss, for he takes it at his peril; and having once recognized it as money, cannot afterwards be allowed to say it is not so. This, which is the general rule applicable wherever a debt is paid in coin, seems to rest on satisfactory grounds; for there are various and well-known tests which may readily be applied for the purpose of ascertaining the goodness of money, as weighing, ringing, &c.; and, moreover, it would obviously open a door to fraud, and endless confusion and delay of business, if the payee of a debt were allowed to say “such and such coins were received in payment from the debtor and were bad; their amount must be paid over again.” In most instances, this would be to place the debtor, who would be without any means of showing that the coins he paid with were other than those which the creditor alleges to be false, at the mercy of the latter. The principle, therefore, that a loss which must fall upon one of two innocent parties, shall fall upon that one whose conduct has given rise to it, seems to apply here, and to show the propriety and justice of ruling that the payee who might, but did not, apply some test, or take the objection at the proper time, is for ever concluded. If the banker, upon the objection being made, should insist that the money is good, and refuse to change it for other coins, the payee ought to request him to put some private mark upon the money, and perhaps to place it in the hands of some third person, until it could be assayed, or other decisive means taken to ascertain its real value.

On the other hand, a banker cannot discharge himself from liability on a customer's cheque by tendering payment in any other money than in English current money,

or in any other form, denomination, or quantity of each denomination, than such as a tender of a debt may legally be made in (*d*), unless with the assent of the customer or on acceptance by the payee.

*Direction to pay in Bills of Exchange or Promissory Notes.* Direction to pay in bills of exchange or promissory notes.  
—By agreement between the drawer and banker, his cheque may direct payment to be made in bills of exchange or promissory notes, but any cheque which does so must be stamped as a bill of exchange for the payment of money on demand under the Stamp Act, 1870, s. 48, subs. 2.

And where this is the case the payee has, in the event of the bills being dishonoured, a right to recover the original debt from the drawer, provided he has been guilty of no *laches* (*e*). On the other hand, the drawer is discharged if the payee, instead of taking the bills, permits the bankers to credit his account with their amount (*f*), for that is equivalent to first discounting the bill with the bankers and then depositing the money with them.

So payment of a cheque may be made, if the holder pleases, by a bill of exchange drawn by the banker (*g*). But under this head many points are to be noticed.

1. If the drawer of the cheque, sending his servant to get it cashed, orders or gives him permission to take, instead of cash, the banker's bill of exchange, that is, a bill of exchange drawn or indorsed by the banker, the drawer of the cheque will only be entitled to come upon the banker for the amount in case of the bill not being paid at maturity, if he has taken all due measures to obtain payment of the bill, by endeavouring to get it accepted, &c.;

(*d*) *Wade's case*, 5 Rep. 114 a; Co. Litt. 207 b.

(*e*) *Ex parte Dickson*, cited in 6 T. R. 142; *Ex parte Blackburn*, 10 Ves. 206.

(*f*) *Bolton v. Richards*, 6 T. R. 139.

(*g*) Com. Dig. tit. Merchant, F. 17. So also, in like circumstances, the banker may pay a cheque by his promissory note. *Sayer v. Wagstaff*, 5 Beav. 415.

for it follows, from the legal relation between a banker and a depositor of money with him, that the former is the debtor of the latter, and by the express words of the 3 & 4 Anne, c. 9, s. 7 (*h*), “if any person doth accept any inland bill of exchange for and in satisfaction of any former debt or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person accepting of any such bill for his debt doth not take his due course to obtain payment thereof by endeavouring to get the same accepted and paid, and make his protest either for non-acceptance or non-payment thereof.” If, therefore, the drawer of the cheque takes all due steps for the above purposes, then the loss, if the bill is dishonoured at maturity, must fall not upon him but upon the banker; if he neglects to take proper measures he must bear the loss.

2. If the payee (not being the drawer) chooses, on presenting the cheque, to take the banker’s bill of exchange instead of cash, and the bill is not paid, he cannot have recourse to the drawer of the cheque, for the drawer, having given him the means of getting his debt discharged in cash, cannot be in a worse position because the payee has elected to take something else (*i*). He may, however (it is submitted), sue the banker on the bill and recover thereon.

3. The same must be the case, although the cheque had circulated through any number of hands before coming into the possession of the bearer, who ultimately presents it for payment; if he chooses, under the circumstances above mentioned, to take in payment the banker’s bill, the drawer and all the successive holders between the drawer and the person presenting for payment are wholly dis-

(*h*) Nearly the same thing had been ruled before the statute in *Darrack v. Savage*, 1 Show. 155. If the servant had no authority to take a bill of exchange in payment, the case would be different, and the banker would be liable. *Ward v. Evans*, 2 Ld. Raym. 928.

(*i*) *Smith v. Ferrand*, 7 B. & C. 24; Com. Dig. tit. Merchant, F. 17.

charged, for none of them are consenting parties to the bearer's election to take less than cash, and cannot, therefore, be liable for the consequences.

So, if the bearer requests it, or does not object at the time, the payment may be effectually made, in the absence of fraud or concealment of facts, in bank post bills (*l*).

So, in like circumstances, payment may be made by another cheque drawn by the banker (*m*).

*Cashing over the Counter.*—Where a cheque is cashed over the counter, the money ceases to be the money of the banker, and he cannot revoke or recal the payment, although he should immediately discover that the drawer's account is considerably overdrawn (*n*). Cashing over the counter.

*Part Payment of Cheque.*—A bill of exchange may be accepted for part only of the sum for which it is drawn (*o*), but whether a banker, who has not sufficient funds of his customer in his hands to pay his cheque in full, is bound or justified in making payment in part, has not been determined in our courts. On principle, it would seem, that a banker would not be bound or justified in doing so (*p*). Part payment of cheque.

(*l*) *Tiley v. Courtier*, 2 C. & J. 16; *Caine v. Coulton*, 1 H. & C. 764.

(*m*) *Jones v. Arthur*, 8 Dowl. 442; *Wilby v. Warren*, 2 C. & J. 18, n.

(*n*) *Chambers v. Miller*, 13 C. B., N. S. 125; 32 L. J., C. P. 30; 3 F. & F. 202; *Pollard v. Bank of England*, L. R., 6 Q. B. 623.

(*o*) *Wegersloffe v. Keene*, 1 Strange, 214.

(*p*) With respect to this point, Mr. Morse observes in his *Treatise on Banks and Banking*, p. 257, "If the bank has not funds enough to the credit of the drawer to pay his cheque in full, it is not obliged to make payment in part. *Murray v. Judah*, 6 Cowen, 490. Whether or not it would be justified in doing so may be questioned. There is no authority on the point. Nor would banks often try to exercise such a right. If they can do so, they are obviously bound to indorse the amount of the payment on the cheque, which would of course still remain in the payee's hands, and which would otherwise on its face appear still to be good for the full value named in it, to the possible deception and loss of the drawer or of innocent third parties. But the better rule, perhaps, would be, to save misunderstandings and complications, that if a bank cannot pay in full, it not only may not, but must not, pay at all. The drawer has not requested it to make a part payment. He has demanded that it

It has already been stated (*q*), that when there are not sufficient assets in the banker's hands to pay a cheque in full, he should not say to the holder, "not enough to meet it by such a sum," and so enable the holder to pay in the deficiency to the drawer's account, and obtain payment of the cheque to the prejudice of his other creditors (*q*).

We proceed to consider a banker's liability as to refusing to pay his customer's cheques.

do a certain act: to wit, pay a certain sum of money on his account. If it will not do this act according to the terms of the authority embodied in the request, it by no means follows that it is authorized to substitute for it a partial performance, or in fact a materially different act. Power to pay only a part of a sum is not necessarily implied in an order, expressed without alternative, to pay that specific sum."

(*q*) *Ante*, p. 5.

## CHAPTER IV.

## DISHONOURING CHEQUES.

IF a banker, having presented to him within banking hours a cheque, bearing the genuine signature of a customer whose funds in the bank at the time are sufficient to pay the amount for which the cheque is drawn, refuses to pay, he is liable in substantial damages to the drawer; but it will be a good answer to *an action to recover damages*, if the banker can convince a jury that, although he had, in point of fact, funds of the drawer's in his hands at the time of presentment of the cheque, yet that such funds had not been paid in long enough to have been in his hands for a reasonable time before the presentment. What is a reasonable time before presentment must be ascertained by the jury in each case, by reference to its particular circumstances: *e. g.*, the general magnitude and extent of the business at the bank, the pressure of business at the time, or on the previous part of the day in question, &c., &c. (*a*).

Also it is a defence to such action, that the drawer's assets have been exhausted, by the payment of bills accepted by him payable at the bankers; and it is not necessary for the bankers to show any special authority or any further order, than that contained in such acceptances, to enable them to pay the amounts due upon the bills (*b*), without giving a right of action for dishonouring cheques presented subsequently.

The following case (*c*) may serve to illustrate the prin-

(*a*) *Whitaker v. Bank of England*, 6 C. & P. 700; 1 C. M. & R. 744; *Marzetti v. Williams*, 1 B. & Ad. 415.

(*b*) *Kymer v. Laurie*, 18 L. J., Q. B. 218. See also *The Agra and Masterman's Bank v. Hoffman*, 34 L. J., Ch. 285.

(*c*) *Marzetti v. Williams*, 1 B. & Ad. 415; *S. P.*, *Rolin v. Steward*, 14

ciples above laid down. On a certain day A. had standing in his name at his bankers a balance of 69*l.* 16*s.* 6*d.* About one o'clock on the same day, the sum of 40*l.* was paid into his account; a little after three o'clock, a cheque drawn by him was presented for payment, the sum being 87*l.* 7*s.* 6*d.* A clerk, after referring to a book, said there were not sufficient assets, but that the cheque might probably go through the Clearing House. The cheque was paid on the following day. At the trial of an action, brought by A. against the bankers, no actual damage was proved to have been sustained by A., and the jury found a verdict for the plaintiff, with nominal damages; the Court, however, refused to grant a new trial, as the dishonour of the plaintiff's cheque by the bankers, having in their hands funds sufficient to meet it at the time, was of itself an actionable wrong entitling him to damages.

"I cannot forbear to observe," said Lord Tenterden, C. J., on the motion for a new trial, "that it is a discredit to a person, and therefore injurious, in fact, to have a draft refused payment for so small a sum; for it shows that the banker had very little confidence in the customer. It is an act particularly calculated to be injurious to a person in trade. My judgment in this case, however, proceeds on the ground that the action is founded on a contract between the plaintiff and the bankers, that the bankers, whenever they should have money in their hands belonging to the plaintiff, or within a reasonable time after they should have received such money, would pay his cheques, and there having been a breach of such contract, the plaintiff is entitled to recover nominal damages."

And Mr. Justice Taunton said, "The jury has found

C. B. 595; 23 L. J., C. P. 148. In *Rolin v. Steward*, which was an action against bankers by a trader having assets in their hands for dishonouring three cheques amounting in the aggregate to 111*l.* 13*s.*, and no special damage was proved, the jury gave 500*l.* damages. The Court suggested that the parties might relieve them from giving any ultimate opinion, but intimated they inclined to think the damages very large, whereupon it was agreed by the parties to reduce them to 200*l.*; and the judgment was entered up accordingly.

that when the cheque was presented for payment a reasonable time had elapsed to have enabled the bankers to enter the 40% to the credit of the plaintiff, and, therefore, that they must or ought to have known that they had funds belonging to him. That was sufficient to entitle the plaintiff to recover nominal damages, for he had a right to have his cheque paid at the time when it was presented, and the bankers were guilty of a wrong by refusing to pay it. Independently of other considerations, the credit of the plaintiff was likely to be injured by the refusal of the defendants to pay the cheque; and as it was the duty of the defendants to pay the cheque when it was presented, and that duty was not performed, I think the plaintiff, who had a right to its being performed, is entitled to recover nominal damages. The case put in the course of the argument, of the holder of a cheque being refused payment, and called back within a few minutes and paid, is an extreme case, and a jury probably would consider that as equivalent to instant payment. That, however, is not the present case. Here the refusal to pay was not countermanded till the following day."

In order to justify a banker in refusing to honour a cheque of his customer, the customer being an executor, and drawing the cheque as executor, there must be a misapplication of the money intended by the executor, so as to constitute a breach of trust, and the banker must be cognizant of that intention; and the existence of a personal benefit to the banker, designed or stipulated for as a consequence of the payment, would be strong evidence that the banker was privy to the breach of trust (*d*).

Where bankers had taken up bills for a customer on the security of the produce of certain consignments, and by a course of dealing with him had permitted him to draw on his account current with them without reference to their advances on the consignments, they cannot, by charging

(*d*) *Gray v. Johnston*, L. R., 3 H. L. Cas. 1.

his account with the advances, in the absence of express notice, treat it as overdrawn, and accordingly dishonour his cheques before the consignments are realized (*e*). An action will lie by a married woman against a bank for dishonouring cheques drawn by her on her separate estate deposited with it (*f*).

(*e*) *Cumming v. Shand*, 5 H. & N. 95; 29 L. J., Ex. 129. See also *Garnett v. McKewan*, L. R., 8 Ex. 10; 42 L. J., Ex. 1; 27 L. T. 560; 21 W. R. 57.

(*f*) *Summers v. City Bank*, L. R., 9 C. P. 581; 43 L. J., C. P. 261.

## CHAPTER V.

## TIME OF PRESENTMENT OF CHEQUES.

THE Courts of law take judicial notice of what are banking hours in the city of London (*a*). What are banking hours in other parts of the metropolis, and in provincial towns, must be proved in each case in which the question becomes material (*b*). Government cheques are not payable at the Bank of England after three o'clock in the afternoon. By the Bank Holidays Act, 1871, the days appointed and kept as bank holidays will be excluded as days for the transaction of business. A notice left at a bank after business hours only operates as notice to the bank from the time when in the ordinary course of business it is opened and read (*c*).

Banking hours.

*Within what Time after it is received by the Payee a Cheque ought to be presented for Payment.*—Somewhat different considerations arise in this respect, according to the character of the parties between whom the question is raised.

Time for presentment.

1. *As between the payee and the drawer* the rule is, that the drawer is not discharged, that is, the payee does not lose his remedy against the drawer by reason of non-presentment within any prescribed time, short of six years after taking the cheque, unless by his delay the drawer has been prejudiced or his position altered for the worse, as for instance, by the insolvency of the banker in the interval (*d*). Still the payee of the cheque must bear in

As between payee and drawer.

(*a*) *Parker v. Gordon*, 7 East, 385; *Jameson v. Swinton*, 2 Taunt. 225.

(*b*) *Hare v. Henty*, 10 C. B., N. S. 365.

(*c*) *Calisher v. Forbes*, 41 L. J., Chanc. 56.

(*d*) *Robinson v. Hawksford*, 9 Q. B. 52; *Hopkins v. Ware*, L. R., 4 Ex. 268; *Alexander v. Burchfield*, 7 M. & G. 1067; *Serle v. Norton*, 2 M. & Rob. 401; *Laws v. Rand*, 3 C. B., N. S. 442; 27 L. J., C. P. 76.

mind that he may be put to much trouble and inconvenience by his neglect to present the cheque within a reasonable time, which is generally considered to mean within the banking hours of the day after it is received (*d*), because bankers in general understand it as a rule of business not to pay old cheques without inquiry; also a banker cannot safely pay a cheque, the drawer of which has died between the date of delivering the cheque and its presentment, because his death operates as a withdrawal of the banker's authority to pay (*e*): also, although the drawer is still living, his account may have been overdrawn, or he may have ceased to have an account with the banker in the interval; and, in either of the three last cases, the payee might be obliged to resort to an action to recover the value. Again, the drawer might in the interval have become bankrupt or insolvent, in neither of which cases would it be probable that the payee would recover the full value.

On the other hand, although, where the payee keeps the cheque beyond a reasonable time without presentment, and the bankers become insolvent in the meantime, the drawer is discharged; yet, if within banking hours of the day after he receives the cheque the payee presents it, and finds that the bankers have become insolvent between his receipt of the cheque and the carrying it for presentment, the drawer is not discharged, and the payee may recover; for here, though both parties are innocent, yet it is just that the payee should be paid his debt, the right to which he has done nothing to forfeit, since he has conformed to the strictest rule that applies to any holder of a cheque, by presenting in the course of the day after his receipt of it (*f*).

(*d*) *Boddington v. Schlenker*, 4 B. & Ad. 752; *Pocklington v. Sylvester*, Chitty on Bills, 346 (10th ed.); *Moule v. Brown*, 4 Bing. N. C. 268.

(*e*) *Tate v. Hilbert*, 2 Ves. jun. 118; *Hewett v. Kay*, L. R., 6 Eq. 198; *Bromley v. Brundton*, L. R., 5 Eq. 275. The banker would be justified in paying if, at the time, he had no knowledge of the death, *S. C.*

(*f*) *Pocklington v. Sylvester*, Chitty on Bills, 346 (10th ed.); *Boddington v. Schlenker*, 4 B. & Ad. 752.

Where the cheque is not received till after banking hours the time allowed the payee to present it does not commence to run till the first day after that on which he actually received it (*g*).

The holder of a cheque, whether payee or other holder, does not obtain any more time by sending the cheque to his own bankers and presenting it through them; but in all cases, to be safe, he must present within banking hours of the day next after the day of the delivery of the cheque to him, whether he presents it himself or by a servant, or through his bankers (*h*). There is, of course, nothing to prevent the drawer agreeing with the payee to extend the time for presentment, by his assent, either express or implied (*h*). On the other hand, the payee, by transmitting a cheque on another bank to his own bankers, has not less time to present it in than he would have had, if he had kept it and presented it himself; and although the bankers do not send it to the Clearing House the same day, the drawer is not discharged (*i*).

When a creditor takes from his debtor's agent, on account of his debt, the cheque of the agent, he is bound to present it for payment within a reasonable time; and if he fails to do so, and by the delay alters for the worse the position of the debtor, the debtor will be discharged, although he was no party to the cheque (*j*).

*Where Payee and Drawee do not reside in the same Place.*

—Where the payee of a cheque and the drawee do not reside in the same place, the rule as to the time in which the cheque is to be presented has been stated to be this: the payee should forward it to his bankers or other agent by the next day's post, and they should present it

(*g*) *Bond v. Warden*, 1 Coll. 583.

(*h*) *Alexander v. Burchfield*, 7 M. & G. 1061; *Hare v. Henty*, 10 C. B., N. S. 65; 30 L. J., C. P. 302.

(*i*) *Boddington v. Schlenker*, 4 B. & Ad. 752.

(*j*) *Hopkins v. Harr*, L. R., 4 Ex. 268; 38 L. J., Ex. 147.

on the day after such receipt (*k*). The cheque should be sent by the bankers direct to the drawee, for the time for presenting it cannot be increased by their permitting it to circulate through branches or agents of the bank (*l*). But a country banker receiving a cheque drawn upon another country banker may, however, instead of transmitting it by post for presentation to the banker on whom it is drawn, send the cheque to his London agent to pass through the Clearing House (*m*).

2. *As between Transferee and Payee*.—When the person who holds the cheque is not the payee, but has received the cheque from the payee or from some intermediate holder, and upon the cheque being dishonoured seeks to recover from the person from whom he received it, the rule is that he should present it within banking hours on the day following that on which he received it, provided there are the ordinary means of doing so (*n*).

3. *As between Transferee and Drawer*.—As against the drawer, the transferee stands in the same position as the payee, and he must present the cheque within the same time as he would have had to present it (*o*).

Place of presentment.

*The Presentment* must in general be made, not only within banking hours, but at the banking-house, of the bankers on whom the cheque is drawn. But the institution called the Clearing House, and the practice of using it, which is now very general, if not universal, among the bankers of the metropolis, have introduced a small divergence from the rule. Since 1858, the country bankers too have very generally adopted the Clearing House, for the

(*k*) *Bond v. Warden*, 1 Coll. 583; *Rickford v. Ridge*, 2 Camp. 537; *Heywood v. Pickering*, L. R., 9 Q. B. 428; *Hare v. Henty*, 30 L. J., C. P. 302.

(*l*) See Byles on Bills, 1879, p. 20; *Moule v. Brown*, 4 Bing. N. C. 266.

(*m*) *Hare v. Henty*, supra; *Prideaux v. Criddle*, L. R., 4 Q. B. 455.

(*n*) *Moule v. Brown*, 4 Bing. N. C. 268.

(*o*) *Robson v. Bennet*, 2 Taunt. 388; *Moul v. Brown*, supra.

presentation and collection of cheques payable in different parts of the country (*p*).

*The Clearing House* is a large room fitted with drawers : each banker using the house has one of these, marked with his name or firm. In the morning at nine o'clock and at half-past three o'clock in the afternoon of each week day, a clerk from each banker using the house attends, bringing with him the cheques on other banks that have been paid into his bank since the last clearing ; these he deposits in the drawers of the respective banks on which they are drawn ; he then credits their accounts separately with the different amounts of the cheques they have placed in his drawer, as against his bank. Balances are then struck from all the accounts, and the claims between the various banks transferred from one to another, until they are so wound up and mutually cancelled, that each clerk has only to settle, in cash, with two or three others, and thus, by means of comparatively small sums in money, the balances are immediately paid. When cheques are paid into a bank after clearing time (*q*), they are sent to the respective houses on which they are drawn, when, if the bankers intend to pay them, they are "marked," which is understood as an engagement that they will be passed, or paid at the Clearing House next day (*r*), and that they have priority before the cheques which come in on that day (*s*). Formerly it was held that this marking was equivalent to an acceptance, and that the bankers so marking rendered themselves liable to pay the cheque. Now, however, by 19 & 20 Vict. c. 97, s. 6, and 41 Vict. c. 13, an acceptance, though it need not bear the word "accepted," must be signed by the drawee.

Passing  
through the  
Clearing  
House.

(*p*) *Hare v. Henty*, 10 C. B., N. S. 65; 30 L. J., C. P. 302.

(*q*) See 4 B. & Ad. 754.

(*r*) *McCulloch*, *Commerc. Dict. voc. Clearing House*, 4 B. & Ad. 753 ; *Warwick v. Rogers*, 5 M. & G. 348 ; *Robarts v. Tucker*, 16 Q. B. 570 ; *Belamy v. Majoribanks*, 7 Exch. 389 ; *Boddington v. Schlenger*, 2 B. & Ad. 752.

(*s*) *Robson v. Bennett*, 2 Taunt. 388 ; *Stevens v. Hill*, 5 Esp. 247.

From this practice, as above detailed, it is obvious that a large portion of the cheques which are paid into banks in London by customers, in order that the amounts may be carried to their accounts as money, is never presented by such bankers, as bearers, at the banking houses on which they are drawn; but that, instead, is established the practice of placing them in the drawers at the Clearing House belonging to the latter banks. In other words, they are presented to the clerks of the latter, who attend at the Clearing House; and such presentment has been held to be sufficient (*t*).

If the bearer banks with the same bankers on whom the cheque is drawn, no promise to pay can be implied from the bankers receiving the cheque without observation, and keeping it till the following day; for *prima facie* they will be taken to have received it as agents for the bearer (*u*). As least they will be so where they had no funds of the drawer's in their hands at the time.

But where A. and B. severally kept accounts at the same bank, and A. paid in a cheque in his favour, drawn by B., who was at the time considerably indebted to the bank, and the bankers received the cheque without observation, and on the same day received moneys on account of B., and paid cheques drawn by him, and on the next day received moneys on his account, but in each case appropriated those moneys to other claims upon B., and they had written to A. saying that they had not carried the cheque to his credit, but would retain it in the hope of its being provided for, and promised B. that they would pay it when they had funds; it was held, that A. might recover from the bankers the amount of the cheque, in an action for money had and received (*x*), the bankers having had funds of B.'s in their hands subsequently to the receipt of the cheque, sufficient to have paid it but for their appropriation of them to other claims on him.

*Reynolds v. Chettle*, 2 Camp. 596.  
 (*u*) *Boyd v. Emmerson*, 2 A. & E. 184.  
 (*x*) *Kelsby v. Williams*, 5 B. & A. 815.

*Presentation of Country Cheques through the Clearing House.*—Cheques on country bankers situate at a distance from each other, when intended for collection in London, are crossed with the name of a London banker to whom they are sent by post, and who presents them in regular course at the country Clearing House to the London correspondent of the country banker whose correspondent's name is printed on the cheques. The London agent of the country banker does not mark them at once, or, in other words, as with cheques upon a London banker, does not give credit for them, but he transmits them by the next post to the country banker, who advises his London agent, by return of post, to debit his account with the same, and the London agent thereupon gives a draft for the amount to the banker from whom he received the cheques. The country Clearing House is used as a convenient medium for the presentment of country cheques to the drawees (y).

Presentation  
of country  
cheques  
through the  
clearing  
house.

A., a banker at Worthing, received from B., a customer, a cheque drawn upon C., a banker at Lewes, distant about eighteen miles from Worthing, on the morning of Friday, the 8th of July, 1859, and sent it that evening by post to his London correspondent, D., for presentment through the country Clearing House. D.'s clerk handed the cheque at the Clearing House on the morning of Saturday, the 9th of July, to the clerk of E., the London correspondent of C., the drawer of the cheque, who sent it down by post of that evening to C., and it was held that the presentment was in due time (y).

The following is another case on the same subject:—

B., on Wednesday, the 6th of May, 1864, drew a cheque on his bankers, Morgan & Co., of Ross, Herefordshire, payable to Mr. Watkins, or bearer, with the memorandum at the foot, "London agents, Messrs. Barclay & Co." He paid the cheque on the same day to Watkins, in Mon-

(y) *Hare v. Henty*, 10 C. B., N. S. 65; 30 L. J., C. P. 302.

mouth, a post town ten miles from Ross; Watkins kept it from that day until Friday, when he paid it to the credit of his account at his bankers, Bailey & Co., Monmouth. They sent it by the post of Friday to the City Bank, their London agents, to be presented to the London agents of the Ross Bank, through the country Clearing House. The City Bank, on the following morning, accordingly presented it to Messrs. Barclay at the Clearing House, and were then informed that Morgan & Co. had closed their account with them on the Thursday preceding, and the City Bank then sent it back by post to Morgan & Co., at Ross, where it arrived on Sunday morning, the 10th of May. Morgan & Co., however, kept it till the 15th, when it was returned by them to the City Bank, through the post, dishonoured. The City Bank received it on the 16th, and by the same day's post sent it to Bailey & Co., who, on the 19th, gave notice of its dishonour to the drawer. Morgan & Co. paid money over the counter and to country bankers by letter till the 13th, when they stopped payment. B., from the time he drew the cheque down to their stoppage, had a balance more than sufficient to cover the amount of the cheque. In an action on the cheque by Bailey & Co. against B., the Court held, that there had been laches on the part of the holder in presenting or giving notice of its dishonour, and that the drawer was therefore discharged (*a*).

It was intimated by the Court that it was reasonable to send the cheque to the London agents of Morgan & Co., but that it ought to have been returned to Bailey & Co. when it was found that Barclay & Co. had ceased to be the agents of Morgan & Co. (*a*).

The payee of a cheque drawn on Monday, the 4th June, on a bank at Falmouth, paid it on Tuesday, the 5th, to the credit of his account in a bank at Truro, which is about ten miles from Falmouth. On Tuesday, the 5th,

(*a*) *Bailey v. Bodenham*, 16 C. B., N. S. 288; 33 L. J., C. P. 252.

the Truro Bank, having no agent at Falmouth, sent the cheque to Barclay & Co. their London agents, who received it on Wednesday, the 6th, and handed it through the Clearing House to the London agents of the Falmouth Bank; they forwarded it to the Falmouth Bank, who received it on Thursday, the 7th, and debited the drawer's account with the amount and cancelled the cheque, and by post of the same day wrote to their London agents to pay it on their account. On the morning of that day their London agents stopped payment, and the London agents of the Truro Bank wrote to the Falmouth Bank requesting them to return the cheque or pay it. On Friday, the 8th, the Falmouth Bank wrote, refusing to do either, and on the following day stopped payment. On Saturday, the 9th, the Truro Bank gave the payee notice of its dishonour: the Court of Queen's Bench held, that the Truro Bank was entitled to debit the payee with the amount of the cheque, inasmuch as it was not bound to send the cheque direct to the Falmouth Bank, and therefore it was presented in due time, and notice of dishonour was given to the payee in due time (*b*).

*Presentment by Post.*—Sending a cheque in a letter by post to the drawee is a good presentment, but there ought to be a notice of dishonour if the money is not received by return of post (*c*). Presentment by post.

*With respect to the Presentation of stale or overdue Cheques.* Presentment of stale or overdue cheques.  
—It is well settled, and may be regarded as a fixed rule, that the indorsee of an ordinary bill of exchange, or promissory note, takes it if overdue with the equities that attach to it in the hands of the person from whom he received it; but whether the bearer of a cheque is affected

(*b*) *Prideaux v. Criddle*, 10 B. & S. 515; L. R., 4 Q. B. 455. See also *Pollard v. Bank of England*, L. R., 6 Q. B. 623; *National Bank of America v. Bangs*, 8 Amer. R. 349.

(*c*) *Bailey v. Bodenham*, 16 C. B., N. S. 288; 33 L. J., C. P. 252; *Prideaux v. Criddle*, supra; *Heywood v. Pickering*, L. R., 9 Q. B. 428.

by the same rule, seems to have been laid down with some variation at different times.

In a case where a cheque for 50*l.* was casually lost by the payee, and it was tendered, five days after its date, in payment for goods at a shop, and the shopkeeper took it and gave change out of it, and on the next day presented the cheque and received cash for it, and a verdict was found for the payee, in an action for money had and received against the shopkeeper, the Court treated cheques on the same footing, in this respect, as bills and notes, holding that the person tendering the cheque, not having any title, could not transfer a title (*d*). But in a later case, where a cheque had been fraudulently obtained from the drawer, and a trading firm, to whom it was handed six days after date, had given cash for it, and afterwards presented it and received the amount at the banker's, the drawer failed to recover against the trading firm, in an action for money had and received, and it was said not to be true, as a matter of law, that a party taking a cheque overdue has it with the same title, and no other, as the person from whom he receives it, though the rule, it was allowed, was certainly so with respect to bills of exchange and promissory notes (*e*).

There is an obvious distinction between a bill or a note having a fixed day for payment, which is taken when overdue, and a cheque found in circulation long after its date; in the first case, suspicion of necessity attaches, in the latter, suspicion may or may not justly arise, according to circumstances; whether it does, is for the jury to say. The staleness of a cheque may be a ground on which they may infer fraud, but there does not seem to be any rule of law which points out any given degree of staleness, as evidence conclusive on that point (*f*).

(*d*) *Down v. Halling*, 4 B. & C. 330.

(*e*) *Rothschild v. Corney*, 9 B. & C. 389, 391; *Serrell v. Derbyshire, &c. Railway Company*, 9 C. B. 811.

(*f*) See *Dehars v. Harriatt*, 1 Show. 164; *Brown v. Davies*, 3 T. R. 80; *Sturtevant v. Ford*, 4 Scott, N. R. 670; *per Parke, B.*, 9 M. & W. 17, 18.

So gross negligence may be considered, by the jury, to be shown in the circumstances under which a person takes a stale cheque as cash; viz., negligence of the duty, which those circumstances imposed upon him, of inquiring into the connexion between the bearer and the parties named on the cheque, and if he has been guilty of such gross negligence, they may consider him to have been a fraudulent taker; but no rule of law, it would appear, lays down, with respect to such a cheque, what has been formerly laid down in the case of a party taking a promissory note after the date at which it was made payable in the body of it, that the taking it, after it was due, is a suspicious circumstance, from which the law infers that the taker had knowledge of some infirmity in the title of the holder, and therefore takes it subject to all the objections to which it was liable in the hands of the person from whom he took it (*g*).

Here the negligence consisted, apparently, in want of inquiry to see whether the drawer had not revoked the cheque, which its appearance indicated he had done (*h*).

*When presentable for Payment.*—Bankers are not justified in paying a cheque which is presented to them before the day on which it purports to have been drawn, or bears date, for by so doing they may be liable to pay over again the amount of the cheque; *e.g.*, if it has been lost by the payee, the banker must repay him, it being out of the usual course of banking business to cash cheques before the day of the date (*i*).

When presentable for payment.

(*g*) *Amory v. Mereweather*, 2 B. & C. 578; *Willis v. The Bank of England*, 4 A. & E. 32.

(*h*) *Scholey v. Ramsbottom*, 2 Camp. 485, recognized in *Ingham v. Primrose*, 7 C. B., N. S. 32; 28 L. J., C. P. 294. Since printing the above the subject of overdue cheques has been again considered, and the law, for the present, at least, settled. In *London and County Banking Co. v. Groom* (L. R., 8 Q. B. D. 288), Mr. Justice Field held, that the rule of law as to bills of exchange and promissory notes, that an indorsee taking them after maturity takes them upon the credit of and can stand in no better position than his indorser, does not apply to cheques.

(*i*) *Da Silva v. Fuller*, Chitty on Bills, 180 (10th ed.), cited *per* Parke, B., in *Morley v. Culverwell*, 7 M. & W. 178.

On the other hand, no days of grace are allowed on the presentment of a cheque (*k*).

Cheques drawn by the Treasury on the Bank of England are not payable after three o'clock p.m. (*l*), and they usually bear a memorandum, to this effect, printed at the top of the paper on which they are drawn.

A cheque of the ordinary kind is strictly payable, or at least intended to be paid, immediately on demand; and this appears to be universally the case, with the exception of cheques drawn on bankers in the city of London, where the usage of trade establishes the rule, that a cheque may be retained by the banker, on whom it is drawn, until five o'clock p.m. of the day on which it is presented, and, if there are no assets, it may then be returned to the person presenting it, and that too, although it has been, in the first instance, by mistake cancelled, as intended to be honoured. Thus, where a plaintiff paid into the bank of V. & Co. a cheque drawn upon the defendant's house, and V.'s clerk took it to the Clearing House to be paid, and put it into the defendant's drawer, and received it back before five o'clock cancelled, but with a memorandum, *cancelled by mistake* (*m*), written under, and it was proved that several cheques drawn by the same person had been paid on that day, but that, when the cheque in question came in, the clerk who received it immediately cancelled it, thinking it was to be paid, but finding, in a few minutes, that no more of such cheques were to be paid, wrote the memorandum above mentioned, and it was returned to V.'s clerk accordingly. The Court held that, notwithstanding the cancelling, the defendant, according to the usage proved at the trial, had until five o'clock to return it, and that, having so returned it, this amounted to a

(*k*) *Moyser v. Whitaker*, 9 B. & C. 409; *Sutton v. Toomer*, 7 B. & C. 416; *Dixon v. Nuttall*, 1 C., M. & R. 307. And by the Bills of Exchange Act, 1871, 34 & 35 Vict. c. 74, bills of exchange and promissory notes, payable at sight or on presentation, are payable on demand, and without days of grace.

(*l*) 4 & 5 Will. IV. c. 15, s. 21.

(*m*) See *per Buller, J.*, *Lefley v. Mills*, 4 T. R. 175.

refusal to pay (*n*). A cheque given after banking hours on the 25th of February, upon an understanding that it should not be presented for a few days, is presented in time on the 10th of March (*o*).

*Dispensation with Presentment.*—Knowledge of the bankruptcy or insolvency of the banker on whom a cheque is drawn does not excuse presentment (*p*); but it would seem the notorious stoppage of such bank will do so (*q*). Dispensing with presentment.

*Drawer's Bankruptcy.*—The bankruptcy of the drawer has been already intimated to be a good ground of refusal by the bankers to honour his cheques. In fact bankers stand in no different position, as regards the laws of bankruptcy, than other persons; and, therefore, they are liable, like all other persons who pay money to a bankrupt, after knowledge of an act of bankruptcy, to be obliged to pay it over again to the assignees or trustee. Hence, if a banker, after knowledge of an act of bankruptcy committed by a customer, nevertheless honours his cheques, the banker will be liable to repay the money to the bankrupt's trustee; for, knowing of the act of bankruptcy, the bankers have imputed to them the knowledge of the legal consequences of the act, which is to render the party no longer a free agent and deprive him of the right to dispose of his property (*r*). Drawer's bankruptcy.

The only remedy of the trustee seems to be against

(*n*) *Fernandez v. Glynn*, 1 Camp. 426, n.

(*o*) *Carew v. Duckworth*, L. R., 4 Exch. 313.

(*p*) *Camidge v. Allenby*, 6 B. & C. 373, as explained in *Robson v. Oliver*, 10 Q. B. 704.

(*q*) In the case of bankers who have stopped payment, it is forcibly put, in Byles on Bills (13th ed.), p. 207, that it cannot be necessary for the holders of the notes of a bank which has notoriously stopped payment, and is shut up, to go through the empty form of carrying their notes up to the bank doors and then carrying them home again (see note (*k*), *ibid.*). But the stopping payment by a bank, which issues notes payable on demand, does not operate to dispense with the necessity of making a demand in order that interest may be payable on its notes on winding up. *In re East of England Banking Company*, L. R., 4 Ch. 14; 38 L. J., Chanc. 121.

(*r*) *Vernon v. Hankey*, 2 T. R. 119.

the bankers; he cannot sue the creditor to whom the cheque was delivered and the money paid on it, he not knowing of any act of bankruptcy (s). Nor is it a valid excuse for the banker, that he pays to a creditor who does not know of the act of bankruptcy, to whom a direct payment by the trader would stand good (t). At all events, if the trustee recover from the bankers the amount of a cheque paid to a creditor of the trader, under the above circumstances, he cannot also recover it from the creditor, though the creditor, when he received the money, knew of the act of bankruptcy (u).

Notice of  
dishonour.

When a cheque is presented, and is not paid, notice of its dishonour is unnecessary, if there were no sufficient effects of the drawer in the hands of the banker to meet the cheque at the time, or a reasonable probability or expectation of payment, for the drawer cannot be damnified for want of notice in such case (x). Where there had been eight days, during which there were no funds in the hands of the banker to meet a cheque, it was said there was no ground to contend that the drawer had a reasonable expectation of the cheque being paid, and the case bore no resemblance to cases where funds might be expected to come in—as, for instance, in the case of a landlord whose tenants were accustomed to pay their rents into the bank, and who had therefore a right to expect there would be assets to meet the draft, and might, perhaps, for want of notice, lose his opportunity of recovering rent by distress (x).

(s) *Mathew v. Sherrwell*, 2 Taunt. 439; 1 Rose, 118.

(t) See *Vernon v. Hankey*, 2 T. R. 117.

(u) *Vernon v. Hankey*, 2 T. R. 287.

(x) *Carew v. Duckworth*, L. R., 4 Exch. 313. See *Ex parte Bignold*, 1 Deac. 728; *Wirth v. Austin*, L. R., 10 C. P. 689.

## CHAPTER VI.

## CROSSED CHEQUES.

PREVIOUSLY to the alteration of the law of crossed cheques effected by the statutes hereinafter referred to, in the metropolis, and in many other places, it was a common practice for a person drawing a cheque, to write across the cheque the name of a banker, ordinarily the banker of the party in whose favour it was drawn. The *intention* of this was to advertise the bankers upon whom the cheque was drawn that they were to cash the cheque only to or in favour of the banker whose name so appeared written across the instrument; the reason for adopting the precaution was to prevent its being paid to a wrongful bearer, *e. g.*, one who had found it, or got possession of it by fraud or felony.

Practice as to crossing cheques before alteration by statute.

If, however, a cheque so crossed was handed to another person as bearer, there was no objection to his erasing the name of the banker that he found upon it, provided he substituted the name of another banker (*a*).

It was not unusual to write across a cheque "——— and Co.," leaving a blank space on the left hand side of the word, "and," in order that it might be filled in with the name of the banker through whom the payee, or any one to whom he might pass the cheque, intended that the cheque should be presented; and when so crossed, as in the former case, the banker on whom the cheque was drawn was in the habit, in London and other places, of refusing to cash the cheque, if presented otherwise than through *the* banker; and so, if the blank were not filled

(a) *Stewart v. Lee*, M. & M. 158.

up, the practice was, that it was only paid when presented through *some* banker (*b*).

There was, it was held, no obligation on a banker on whom a cheque was drawn, arising either from usage or otherwise (in the absence of a special usage or a special agreement to that effect), to pay a cheque only through the bankers, with whose name they found it crossed in their customer's handwriting; consequently they were not liable to an action at the suit of the drawer, as for a violation of duty, if they paid it otherwise, although the drawer might have been, in consequence of such payment by them, subject to a loss, and that the crossing of a cheque, payable to bearer, with the name of the banker did not restrict its negotiability to such banker alone.

Such crossing was, however, so far a protection to the owner of the cheque, that it was considered that the banker upon whom the cheque was drawn ought not to have paid it, except through a banker; and that if he did so, and the person actually presenting it turned out not to be the lawful owner, the circumstance of his so paying would have been strong evidence of negligence on the part of the banker, in the event of his seeking to claim credit against his customer for the amount (*c*).

(*b*) Such crossing had not the effect of affecting the bankers whose name was written across it, and into whose bank it was paid, with knowledge that the sum mentioned in it was the money of the payee. Thus, when C. drew a cheque on his banker, payable to A. and B., assignees of P., and crossed it with the name of their bankers, with whom they had an account as assignees: B., who had a private account with the same bankers, paid in the cheque to that account; the Court held, that the bankers were justified in applying it to that account, because, according to the usage of trade and of bankers, the crossing with the name of the payees' bankers was no notification to them that the money was the money of the payees. *Stewart v. Lee*, M. & M. 158.

(*c*) The history, origin and legal effect of crossing cheques are stated in the judgment of the Court in *Bellamy v. Marjoribanks* (7 Exch. 389), as follows:—

History,  
origin, and  
legal effect of  
crossing  
cheques.

“The crossing a cheque cannot operate as an indorsement to the banker, whose name is used, because it was not written with any intent to transfer the property in the cheque to him, and it wants the essential part of an indorsement, the delivery of the instrument to the indorsee. And we think that it cannot be well supposed that the usage is to be considered as equivalent to the direction by the holder or drawer to the drawee, not to pay to the bearer, but to a particular person only—for

Such having been adjudged to be the common law on this subject, the 19 & 20 Vict. c. 25, was first passed to alter it. That statute, after reciting that doubts had arisen as to the obligations of bankers with respect to cross-written drafts, and that it would conduce to the ease of commerce, the security of property, and the prevention of crime, if drawers or holders of drafts on bankers, payable to bearer or to order on demand, were enabled effectually to direct the payment of the same to be made only to or through some banker, enacted, that in every case where a

Statute as to  
crossing  
cheques.

then the cheque would be altered in a manner which would take it out of the exemption of the Stamp Act (55 Geo. III. c. 184), Sched. I., which applies to cheques payable to bearer only, and the bankers to whom it was addressed could not be bound to pay to the person named. We are, therefore, of opinion that a crossing the cheque with the name of a banker cannot have the effect of restricting its negotiability to such banker only. To hold it to have this effect, would be to render the instrument no longer a cheque."

"It was agreed, on all hands, that the practice of crossing cheques originated at the Clearing House; the clerks of the different bankers who did business there having been accustomed to write across the cheques the names of their employers, so as to enable the Clearing House clerks to make up the accounts. It is quite clear that this had nothing whatever to do with the restriction of the negotiability, for, at the time when this was done, the cheques were in the course of payment or presentation for payment, and all their negotiability was at an end. The establishment of the Clearing House is comparatively modern, and was within the memory of several of the witnesses. It afterwards became a common practice to cross cheques which were not intended to go through the Clearing House at all with the name of a banker, or with the words '— & Co.,' leaving the rest in blank, and a custom or usage has certainly sprung up in regard to this also. All the witnesses agreed as to the fact of the existence of such a custom, and we think that the great preponderance of evidence on both sides tended to show the custom to be that which is reported to have been stated by some of the jury in the case of *Stewart v. Lee* (M. & M. 158), namely, that, when a cheque is crossed, bankers generally refuse to pay it to anyone except a banker, and if they do pay it to a person not a banker, they consider that they do it at their peril, in the event of the party to whom the payment is made not being entitled to receive it; that the object is to secure the payment, not to any particular banker, but to a banker, in order that it may be easily traced for whose use the money was received; and that it was not intended thereby at all to restrict the circulation or negotiability of the cheque, but merely to compel the holder to present it through a quarter of known respectability and credit. We are strongly inclined to think, on a full inquiry, the usage will turn out to be no more than this; and, considering the custom in this point of view, the crossing is a mere memorandum on the face of the cheque, and forms no part of the instrument itself, and in no way alters its effect. There can be no doubt that such a usage is highly beneficial to the public."

draft on any banker, made payable to bearer or to order on demand, bears across its face an addition, in written or stamped letters, of the name of any banker, or of the words "and company," in full or abbreviated, either of such additions shall have the force of a direction to the bankers upon whom such draft is made, that the same is to be paid only to or through some banker, and the same shall be payable only to or through some banker.

Shortly after the passing of this statute, the Court of Common Pleas and the Exchequer Chamber decided that the crossing on the cheque was not an integral part of the cheque, and consequently its erasure did not amount to a forgery (*d*). It was therefore enacted by the 21 & 22 Vict. c. 79, s. 1, that whenever a cheque or draft on any banker, payable to bearer or to order on demand, should be issued, crossed with the name of a banker, or with two transverse lines with the words "and company," or any abbreviation thereof, such crossing should be deemed a material part of the cheque or draft, and, except as thereafter mentioned, should not be obliterated, added to, or altered, by any person whomsoever, after the issuing thereof; and the banker upon whom such cheque or draft should be drawn should not pay such cheque or draft to any other than the banker with whose name such cheque or draft should be so crossed, or, if the same should be crossed as aforesaid without a banker's name, to any other than a banker.

Then by section 2, whenever such cheque or draft should have been issued uncrossed, or crossed with the words "and company," or any abbreviation thereof, and without the name of any banker, a lawful holder of such cheque or draft, while it remained uncrossed, or crossed with the words "and company," or any abbreviation thereof, without the name of any banker, might cross it with the name

(*d*) *Simmons v. Taylor*, 2 C. B., N. S. 528; 27 L. J., C. P. 45; affirmed on appeal, 4 C. B., N. S. 463.

of a banker; and when a cheque or draft should have been issued uncrossed, a lawful holder might cross it with the words "and company," or any abbreviation thereof, with or without the name of a banker; and any such crossing as in that section mentioned should be deemed to be a material part of the cheque or draft, and should not be obliterated, or added to or altered, by any person whomsoever, after the making thereof; and the banker upon whom the cheque or draft should have been drawn, should not pay such cheque or draft to any other than the banker with whose name the cheque or draft should have been so crossed.

By sect. 3, persons obliterating; altering, or adding to, a crossing on a cheque or draft, with intent to defraud, were to be held guilty of felony (*e*).

It was held that neither of these acts restricted the negotiability of the cheque; and, further, that although the drawer was protected from loss in the event of his banker paying a cheque crossed specially to a bank other than the one specified, it gave no right of action to the payee, if he had ceased to be the lawful holder of such cheque by reason of it's having got into the hands of a *bonâ fide* holder for value before it was presented (*f*). This defect has been remedied by the Crossed Cheques Act of 1876, which enables the payee or any lawful holder to write across it the words "not negotiable" (*g*), the effect of which is to secure his remaining the "true owner" of the cheque even as against a subsequent *bonâ fide* holder for value, and as such to sue the drawee bank under sect. 10, for paying the cheque otherwise than to the banker to whom the same has been crossed.

(*e*) This section was repealed by the 24 & 25 Vict. c. 95, but re-enacted by the 24 & 25 Vict. c. 98, s. 25, defining the punishment on conviction to be penal servitude for life, or for three years (now by 27 & 28 Vict. c. 47, s. 2, not less than five years), or imprisonment for two years, with or without hard labour, and with or without solitary confinement.

(*f*) *Smith v. Union Bank of London*, L. R., 10 Q. B. 291; 45 L. J., Q. B. 149; 24 W. R. 194. See also *Bobbet v. Pinkett*, L. R., 1 Ex. D. 368; 45 L. J., Ex. 555; 24 W. R. 711.

(*g*) 39 & 40 Vict. c. 81, s. 5.

The following is the act referred to:—

39 & 40 VICT. c. 81.

*“An Act for amending the Law relating to Crossed Cheques.  
[15th August, 1876.]”*

Short title.

“1. This act may be cited as ‘The Crossed Cheques Act, 1876.’

Repeal of acts in schedule.

“2. The acts described in the schedule to this act (*f*) are hereby repealed, but this repeal shall not affect any right, interest or liability acquired or accrued before the passing of this act.

Interpretation.

“3. In this act—

“‘Cheque’ means a draft or order on a banker payable to bearer or to order on demand, and includes a warrant for payment of dividend on stock sent by post by the governor and company of the Bank of England or of Ireland, under the authority of any act of parliament for the time being in force :

“‘Banker’ includes persons or a corporation or company acting as bankers.

General and special crossings.

“4. Where a cheque bears across its face an addition of the words ‘and company,’ or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, and either with or without the words ‘not negotiable,’ that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

“Where a cheque bears across its face an addition of the name of a banker, either with or without the words ‘not negotiable,’ that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

(*f*) 19 & 20 Vict. c. 25; 21 & 22 Vict. c. 79.

“ 5. Where a cheque is uncrossed, a lawful holder may cross it generally or specially. Crossing after issue.

“ Where a cheque is crossed generally, a lawful holder may cross it specially.

“ Where a cheque is crossed generally or specially, a lawful holder may add the words ‘not negotiable.’

“ Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection (*g*).

“ 6. A crossing authorized by this act shall be deemed a material part of the cheque, and it shall not be lawful for any person to obliterate or, except as authorized by this act, to add or to alter the crossing (*h*). Crossing material part of cheque.

“ 7. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Payment to banker only.

“ Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or to his agent for collection.

“ 8. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof. Cheque crossed specially more than once not to be paid.

“ 9. Where the banker on whom a crossed cheque is drawn has in good faith and without negligence paid such cheque, if crossed generally to a banker, and if crossed specially to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in the same position in Protection of banker and drawer where cheque crossed specially.

(*g*) The crossing to the agent banker does not seem actually necessary in order to get the cheque cashed. (See sect. 7.) The second crossing is also a material part of the cheque. (See sect. 6.)

(*h*) It is to be noticed that there are no direct words in this section forbidding the *cancellation* of a crossing. The drawer, it is submitted, may cancel the crossing by writing “pay cash,” as under 21 & 22 Vict. c. 79.

all respects, as they would respectively have been entitled to and have been placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Banker paying cheque contrary to provisions of act to be liable to lawful owner.

“10. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same shall be crossed, or his agent for collection, being a banker, shall be liable to the true owner (*i*) of the cheque for any loss he may sustain owing to the cheque having been so paid.

Relief of banker from responsibility in some cases.

“11. Where a cheque is presented for payment, which does not at the time of presentation appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this act, a banker paying the cheque, in good faith and without negligence, shall not be responsible or incur any liability, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated, or having been added to or altered otherwise than as authorized by this act, and of payment being made otherwise than to a banker or the banker to whom the cheque is or was crossed, or to his agent for collection being a banker (as the case may be) (*j*).

Title of holder of cheque crossed specially.

“12. A person taking a cheque crossed generally or specially, bearing in either case the words ‘not negotiable,’ shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

“But a banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability

(*i*) If such cheque bears the words “not negotiable” the true owner will be, by virtue of sect. 12, the last lawful holder before a defect in its title has accrued; if it does not bear these words, any *bonâ fide* holder for value is the true owner.

(*j*) The obliteration, &c. of a crossed cheque with a felonious intent, though not made a felony by this act, is made so by 24 & 25 Vict. c. 95; see p. 67, note (*g*).

to the true owner of the cheque by reason only of having received such payment" (*k*).

(*k*) In the recent case of *Mathieson v. London and County Bank* (5 C. P. D. 7), it was contended that the protection clause in this section only applied to cases in which the cheque had been specially or generally crossed with the words "not negotiable," and that if a cheque merely generally or specially crossed had been paid into a banker for collection, the proceeds could be recovered from him by the true owner, should the customer's title to the cheque prove defective. The contention, however, was overruled, and it was decided that the banker was relieved from responsibility to the true owner of a cheque crossed in blank, but without the words "not negotiable," where he had *bonâ fide*, and in the usual course of business, and without negligence, received payment of it for a customer, notwithstanding any defect in the title of the latter.

## CHAPTER VII.

## CASHED CHEQUES.

LET us consider what is the proper mode of disposing of a cheque after it has been cashed.

By the Stamp Act, 1870, s. 51 (2), the banker must cancel it; but is the banker, or the drawer, entitled to its possession? We have seen that when a cheque is dishonoured, it is returned, in the technical phrase, with "no effects," or words to that effect, written upon it. When the banker hands back the cheque to the drawer, after it has been cashed by the banker, this restoration is not known as a return of the cheque. In fact, however, such restoration nearly always takes place; the banker's duty, in the absence of any agreement with his customer to the contrary, being to return the cheque after cashing it. Except where there is such an agreement, a banker has no more right to a cheque which he has honoured, than the payee of a bill of exchange has to the bill when paid. It is always considered that the cheque when paid (*a*) is the property of the drawer and in his possession; the banker, *for this purpose*, being his agent, and the possession of the banker his possession (*b*); and therefore where the drawer is one of the parties to an action, a notice to produce is all that is necessary to get the paid cheque before the Court (*c*).

This is the rule with respect to all cheques drawn in the usual mode. But in some cases bankers require their customers before opening an account to consent to their cheques being retained by the bank, and there may also be instances

(*a*) *Per* Wilde, C. J., in *Reg. v. Watts*, 2 Den. C. C. 21.

(*b*) *Partridge v. Coates*, R. & M. 156.

(*c*) *Burton v. Payne*, 2 C. & P. 520.

where a cheque is drawn with the intention that it should remain in the banker's hands, after he has paid out the amount of it, as a kind of security for repayment, on which he may be able, if necessary, to proceed against the customer (*d*).

The reason of the above rule is immediately seen when we consider that the cheque, bearing the tokens of having been cashed by the bankers, affords evidence, when produced, that the money for which it is drawn has been paid, according to the requirement of the drawer, by the drawees; it is, therefore, the drawer's proof, or voucher, of the payment of the debt due to the payee of the cheque. When the drawer draws, on his own account, against his own moneys deposited with the bankers, the cheque in its cancelled state is his evidence against the payee that the debt has been discharged. When the drawer draws on a fund in the banker's, upon which he is specially empowered, in respect of some office or situation which he holds, to draw, it is his voucher, as against his constituents to whom the fund belongs, that their debt to the payee has been duly discharged. In either case equally, the cheque, or the piece of paper, is the property of the drawer (*e*).

Where a drawer of a cheque, after it had been paid and returned to him cancelled by his bankers, darkened the signature so as to give it the appearance of a forgery; and then took it to his bankers and represented it to them as the forgery of another person: it was held, that the alteration of his own cheque by the drawer, although a cheat on his bankers, was not a forgery (*f*).

(*d*) See *Other v. Iveson*, 24 L. J., Ch. 654.

(*e*) *Reg. v. Watts*, 2 Den. C. C. 14, 22.

(*f*) *Brittain v. Bank of London*, 3 F. & F. 465; 11 W. R. 569.

## CHAPTER VIII.

## CHEQUES AS EVIDENCE OF PAYMENT, ETC.

WHERE the plaintiff was tenant, and the defendant land steward, of a proprietor of land, and the defendant had received from a railway company a sum of money to be handed over to the plaintiff, as compensation for injury done to his temporary interest, as tenant, by the company's works, and the defendant had drawn a cheque, for 15*l.*, upon his bankers in favour of the plaintiff, who had presented it to the bankers and obtained payment of it from them; but there was no evidence that the cheque had been delivered by the defendant to the plaintiff, it was held, notwithstanding this, that the cheque, upon being produced by the defendant in a cancelled state, was evidence of the payment to the plaintiff of the 15*l.* (*a*). Here, it will be observed, there was independent evidence to establish the fact of money being due from the defendant to the plaintiff: but unless a consideration for delivering the cheque, and the circumstances under which it is delivered, are shown, the proof of the delivery and payment of a cheque to a party is not sufficient to prove a *debt* (*b*); so that to produce a cheque drawn by the defendant is not an admissible mode of enforcing against him an alleged *debt* due to the plaintiff. But the production of a cancelled cheque, after it has been shown *aliunde* that there was due from the drawer a debt to the payee before the date of the delivery to him of the cheque drawn in his favour, is always evidence of payment, without explicitly tracing the cheque from the drawer to the

(*a*) *Mountford v. Harper*, 16 M. & W. 825; 16 L. J., Exch. 182.

(*b*) *Aubert v. Walsh*, 4 Taunt. 293; *Lloyd v. Sandilands*, Gow, 15, as corrected, *per* Alderson, B., 16 M. & W. 827.

payee. To prove a payment, it is enough to put in evidence a cheque shown to have been in circulation (c).

Another instance of the value of cancelled cheques, as evidence, is the following:—On a certain day A. had a claim, to a certain amount, on B., C. and D., partners. Many months afterwards B. signed a cheque for a larger sum, in the name of himself and C. and D., which was proved to have passed through A.'s hands, and to have been appropriated by him. In an action by A.'s executors against the partners for the original claim, it was held that the cheque was *prima facie* evidence of payment; but there being other circumstances from which a loan for its amount might be inferred, it was left to the jury to say whether the cheque represented a loan from B. alone or from the partnership (d).

It may be convenient to add here some further instances in which cheques are available in evidence.

Many bankers are in the habit of supplying their customers with printed forms, in blank, of cheques, which is convenient for their customers, as saving time and trouble, and useful for both parties, as increasing the difficulty of forging or altering cheques. It is also not unusual, upon a change in the firm of a banking house which adopts this practice, to alter the printed form of the cheques accordingly, and to supply to its customers the altered form, in order that it may be used by them for the future, instead of the old one. Such alteration in the name and style of the firm, when made in the printed form supplied, has been held to constitute a sufficient notification of the change to a customer to whom the altered form has been delivered, and who has used it in drawing cheques (e).

The Bank of England requires its customers to use

(c) *Thompson v. Pitman*, 1 F. & F. 339.

(d) *Boswell v. Smith*, 6 C. & P. 60.

(e) *Barfoot v. Goodall*, 3 Camp. 147.

the engraved forms of cheques, which it supplies, and refuses to pay their cheques drawn otherwise (*f*).

A cheque has been shown, upon the authority of various decisions, to be admissible, when cancelled, *as evidence of payment*, the existence of the debt and other circumstances relating to the giving of the cheque being previously established; but it is not, therefore, to be concluded that the drawing of a cheque in favour of a creditor by the debtor, and the delivery of it to the former, operate *per se* as payment, for a cheque is not money (*g*), nor is it a legal tender; the creditor may always object to it as payment, and if he has done so, when it was delivered to him, he may sue for the original debt, although he retains the cheque (*h*). But it is otherwise in the case of payment by a draft on the debtor's banker, accepted by the banker and payable after so many days' sight; in this case the creditor, not having returned the draft to the debtor, cannot sue before the expiration of the period, because the assets of the debtor in the hands of the banker are bound to the extent of the draft, which sum the debtor cannot withdraw (*i*).

Statute of  
Limitations.

With respect to the Statute of Limitations, it has been held, that when a bill of exchange or promissory note has been given, in part payment of a debt, under such circumstances as to raise the implication of a promise to pay the balance, the defence of the Statute of Limitations is answered, as from the time of the delivery of the negotiable security, whatever afterwards becomes of it (*k*). The question in the case deciding this point was, whether a bill of exchange, drawn by the creditor and accepted by the debtor in part payment of an antecedent debt, was sufficient to take the case out of the statute, and the Court

(*f*) See 6 C. & P. 730.

(*g*) *Moore v. Barthrup*, 1 B. & C. 5.

(*h*) *Hough v. May*, 4 A. & E. 954.

(*i*) *Stuart v. Cave*, 28 L. J., C. P. 193; 5 C. B., N. S. 737.

(*k*) *Turney v. Dodwell*, 23 L. J., Q. B. 137; 3 El. & Bl. 136; *Irving v. Veitch*, 3 M. & W. 90.

determined that it was, and upon principles and reasoning which seem to apply equally to part payment by a cheque.

The plaintiff having agreed to lend to the defendant a sum of money gave him a cheque for the amount, which the defendant paid into his own bankers, receiving credit for the amount. The cheque was not paid by the plaintiff's bankers till some days afterwards. The plaintiff brought an action for money lent, and it was held, that the Statute of Limitations only ran from the time of the payment of the cheque by his bankers (*l*).

Where, however, a purchaser, at a sale, gives a cheque for the amount of the deposit required by the conditions of sale, he may resist an action on the cheque on any grounds which would have enabled him to recover, at law, the deposit, if it had been made in money (*m*).

Again, to establish a petitioning creditor's debt, it is not enough to show that a cheque was drawn by him in favour of the trader before the bankruptcy; it must be proved that the amount of the cheque was paid by the petitioning creditor's bankers (*n*). The mere drawing of a cheque on his bankers by A. in favour of B. is not *per se* evidence of a loan of so much from A. to B., without proof that it was presented and paid (*o*).

As we have seen, the ordinary relation of customer and banker is that of creditor and debtor respectively; consequently, where a banker is the petitioning creditor, the production of cancelled cheques, drawn on him by the trader before the bankruptcy, is *prima facie* evidence of a payment of a debt due from the banker to the customer, not of a loan made by the banker to him, nor can this effect of such evidence be rebutted, and the existence of a loan established, so as to constitute a petitioning creditor's debt, without the clearest proof that the trader's account

(*l*) *Garden v. Bruce*, L. R., 3 C. P. 300; 37 L. J., C. P. 112.

(*m*) *Mills v. Oddy*, 6 C. & P. 735; 2 C., M. & R. 103.

(*n*) *Bleasby v. Crossley*, 3 Bing. 430.

(*o*) *Pearce v. Davis*, 1 M. & Rob. 365; *Cary v. Gerrish*, 4 Esp. 9.

with the bank was overdrawn at the time the cheques were honoured (*p*). The point does not appear to have been raised in this case, that the circumstance of the banker's having retained, in his own hands, these cashed cheques, contrary to the practice in the case of cheques drawn in ordinary circumstances, and the trader's submitting to the banker's doing so, in contravention of what would have been his right, if the cheques had been drawn in the ordinary course, was evidence to show a loan from the banker. The banker, in that case, would have a right to retain the cheques, because to part with them would be to put beyond his control the only conclusive evidence he might have of the loan, beyond the entries in his own books corresponding with the cheques, which would be perhaps open to the objection, that to let them in would be to allow the making of evidence in a man's own favour.

In all cases of loans to customers some security, independent of cheques of the character of those just mentioned, ought, if possible, to be taken by the banker.

It has been already mentioned, that if bankers, knowing of an act of bankruptcy of a customer having funds in their hands, honour his cheques, they are liable to the assignees of the customer, on his becoming bankrupt, for the amount they have paid out to such orders (*q*).

*Bankers stopping Payment.*—As to the operation of a cheque drawn after the stoppage of payment by the bankers; A. and B., who were partners, had a joint account with their bankers; A. had also a separate account; on the 22nd April, 1843, the bankers announced a suspension of payment, and that they could not answer any more cheques: at that time A. and B. were indebted, on the joint account, 335*l.* to the bank, but the bank was indebted to A., on his separate account, 478*l.*; after this no cash payments were made by the bank; on the 25th May, A. assigned the

(*p*) *Fletcher v. Manning*, 12 M. & W. 579.

(*q*) *Vernon v. Hawkey*, 2 T. R. 113.

balance of 478*l.*, due to him, to the joint account of A. and B., and gave a written notice to the bankers of such assignment, and A. and B. jointly required the bankers to place such balance to their joint account, which was not complied with; on the 30th May an act of bankruptcy was committed by the bankers, on which the fiat issued on the 31st: it was held that A. and B. had no right to set off the two debts, their conduct showing that, though they knew they could not obtain payment of a cheque, they had attempted to have the full benefit of A.'s debt. "The plaintiffs (A. and B.)," the Master of the Rolls said, "knowing that no cheque drawn upon the bank would be answered, resolved to have the benefit of the balance, in a way which they might not have considered prejudicial to any one, but which was nevertheless contrary to the policy of the bankrupt laws; and this was by transferring the balance due to Thomas Watts (A.) on his separate account, and which could not be recovered, to the partnership account. They might have been encouraged to this course, as the same thing had been done by the bankers for other persons; but it was a course which the law did not sanction" (r).

(r) *Watts v. Christie*, 11 Beav. 546; 13 Jur. 845.

## CHAPTER IX.

## CHEQUES CONSIDERED AS MONEY.

By the usage of trade cheques have been, in some cases, considered as money. For instance, by the usage of banking, if a bill was sent up to a London banker from a country correspondent, to be presented for payment, the London banker was thought to be justified in receiving a cheque in payment for it, though the cheque should be dishonoured after he has given up the bill (*a*); but it may be doubted whether this usage would be considered, at the present day, to be a reasonable usage so as to protect the London banker.

Another case in which a cheque has been regarded as payment is the following:—A cheque given for stock sold was lost by the vendor in going home; the purchaser was immediately apprised of the loss, but refused to pay the price of the stock without an indemnity. Four months after this the bankers on whom the cheque was drawn failed, with sufficient money of the drawer's in their hands to cover it. Held that, under these circumstances, an action would not lie by the vendor for the price (*b*).

Cheques belonging to a person, against whose effects a writ of *fiery facias* may have been sued out of any superior or inferior Court, may now, and must, be seized by the sheriff, by virtue of the 1 & 2 Vict. c. 110, s. 12, but the statute makes a distinction between cheques, and money or bank notes (both of which it empowers and orders the sheriff to seize), in this way: it directs that money and bank notes shall be given up to the judgment creditor,

(*a*) *Russell v. Hankey*, 6 T. R. 12; *Ridley v. Blackett*, Peake, Add. Cas. 62.

(*b*) *Bevan v. Hill*, 2 Camp. 381.

but the sheriff is to hold cheques as a security for the sum directed by the writ to be levied, and is enabled to sue upon them, and the payment by the party liable on such cheque, with or without suit, or the recovery and levying execution against the party so liable, is to discharge such party from his liability on the cheque, and then the sheriff is to pay over the money so recovered to the judgment creditor: provided that no sheriff shall be bound to sue any party upon such cheque, unless the judgment creditor shall enter into a bond with two sureties for indemnifying him from all costs and expenses to be incurred in the prosecution of the action.

A judgment creditor, finding that a sum of money was about to be paid out, in a cause in Chancery, to his debtor, applied to the Court to order that the sheriff might be at liberty to seize, in the hands of the Accountant-General in Chancery, a cheque by means of which the sum was to be paid out: it was held, that the cheque was liable, by virtue of the above statute, to seizure: it was also held, that, inasmuch as the cheque was in the hands of the Accountant-General of the Court, the application was proper (*c*); that is, that it would not have been proper for the sheriff to seize without being authorized by an order of the Court.

In another case, subsequent to this, it was said that a cheque of the Accountant-General in favour of A., but not delivered out, is not A.'s property, so as to be liable to seizure; and leave to seize was refused, the case being, it was said, distinguishable from the last-mentioned case, by the circumstance that the cheque had been delivered out by the Accountant-General in the former case, which was not so in the latter; a stop order was accordingly granted restraining the Accountant-General from parting with the cheque out of his possession (*d*). It may be observed, with respect to the distinction taken between the two cases,

(*c*) *Watts v. Jeffries*, 3 Mac. & G. 422.

(*d*) *Courtoy v. Vincent*, 15 Beav. 486.

that, in the first case, the cheque had been delivered out, but had been replaced in the Accountant-General's hands, so that, the property in it having passed to the creditor, the Accountant-General held it as agent for the creditor, and, the possession of the agent being the possession of the principal, it might be seized in the hands of the one, on the same grounds that it might be seized in the hands of the other.

A cheque may have been treated throughout a transaction as money by all the parties, in which case no one of them can turn round and insist upon any right that he might have derived out of the cheque, considered as an order for the payment of money. Thus, it was held that where a cheque had been deposited with a person to abide a certain event, it was no breach of the stakeholder's duty to get the cheque cashed before the occurrence of the event (*e*).

Where a person fraudulently gives a cheque, which he has no reasonable ground to expect will be honoured, in payment for goods, such cheque will not be considered as money, and the creditor may sue for the price (*f*).

On the sale of goods for ready money, if the purchaser gives in payment his cheque which he then knows he has not funds in the bank to meet, this amounts to a false representation of a material fact, which vitiates the sale and entitles the seller to rescind the contract, even though the purchaser at the time believed, and had reasonable grounds for believing, that the cheque would be paid (*g*).

When a cheque is handed to a person, on a condition which the drawer finds is to be broken or eluded, he has a right to stop the payment of the cheque (*h*). A house in Westphalia having received a sum of money on account

(*e*) *Wilkinson v. Godefroy*, 9 A. & E. 536.

(*f*) *Hawse v. Crowe*, R. & M. 414; *Noble v. Adams*, 7 Taunt. 59; *Earl of Bristol v. Wilsmore*, 1 B. & C. 514.

(*g*) *Loughnan v. Barry*, 6 Ir. R., C. L. 457.

(*h*) *Wienholt v. Spitta*, 3 Camp. 376; see *Spincer v. Spincer*, 2 M. & G. 295.

of the plaintiff, directed the defendants, who were their correspondents in London, to pay it to him, but said they could not allow him interest upon it, as they had made none themselves. This being communicated to the plaintiff, he at first insisted on interest; but finally agreed, on having a cheque for the principal, to give a receipt in full. He accordingly wrote such receipt, and received a cheque for 532*l.* in exchange. Having got it into his hands, he said he should prosecute the house abroad for interest before the Chamber of Commerce in Paris. The defendants thereupon ordered payment of the cheque to be stopped. Lord Ellenborough said:—"If I give a draft upon a condition, and I find the condition is to be eluded, I may stop the payment. This was a conditional delivery of the draft when it was delivered, all still remained *in fieri*. The defendants, on discovering the plaintiff's intentions, were fully justified in resisting the demand. The draft in his hands had become a piece of waste paper" (*h*). But if A., by means of a false pretence or a promise, or a condition which he does not fulfil, procures B. to give him a cheque in favour of C., to whom he pays it, and who receives it *bonâ fide* for value, B. remains liable on it, and, if cashed by C., he cannot recover the money from him (*i*).

A banker has no right to debit the customer, who draws a cheque, from the date at which it is drawn; he is bound to make the entry, as of the date when the cheque was cashed (*k*).

(*i*) *Watson v. Russell*, 3 B. & S. 34; 31 L. J., Q. B. 304. See also *Currie v. Misa*, L. R., 1 App. Ca. 554; 45 L. J., Q. B. 852; 24 W. R. 450.

(*k*) *Goodbody v. Foster*, cited in Byles on Bills, 24 (13th edit.).

## CHAPTER X.

## CHEQUES ANALOGOUS TO BILLS OF EXCHANGE.

CHEQUES are by recent legislation imposing a stamp duty upon them, and creating a class payable to order, nearly on the same footing as bills of exchange; and the decisions of the Courts have been of late in favour of putting them on the same footing as to their general legal incidents and characteristics. Cheques, though not usually, may be accepted by the banker (*a*). When payable to bearer, they pass by delivery; if to order, by indorsement (*a*). A holder is affected by the same equities and infirmities as attach to the title of holders of bills of exchange (*b*). Cheques were also within the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), by which a summary mode of proceeding to recover upon them was provided (*c*). This procedure is, however, now abolished by Order II. r. 6 of the Rules of the Supreme Court, 1880. The Courts, on various occasions, have pointed out differences and analogies existing between the rules and principles applicable to cheques and bills of exchange. Thus, no days of grace are allowed with respect to cheques, which are always to be cashed speedily, if not immediately; on bills of exchange, except when drawn on demand or at sight or on presentation (*d*), days of grace are allowed. The payee of a cheque does not obtain any more time for presentment by employing a banker to make it, while in the case of a bill of exchange, by the custom of merchants, the holder obtains a day more for giving notice of

(*a*) *Keene v. Beard*, 8 C. B., N. S. 372, 380.

(*b*) *Whistler v. Forster*, 14 C. B., N. S. 248; 32 L. J., C. P. 161; *Watson v. Russell*, 3 B. & S. 40.

(*c*) *Eyre v. Waller*, 5 H. & N. 460; 26 L. J., Exch. 246.

(*d*) 34 & 35 Vict. c. 74.

dishonour, by presenting it through a banker, than if he presented the bill himself (*e*). Again, the death of the drawer of a cheque rescinds the banker's authority to pay it (*f*); the death of the drawer of a bill of exchange has no operation to diminish or alter the nature of the responsibilities of the other parties to it (*g*).

In another respect a cheque differs from a bill of exchange,—it is an appropriation of so much money of the drawer's in the hands of the banker upon whom it is drawn, for the purpose of discharging a debt or liability of the drawer to a third person; whereas it is not necessary that there should be money of the drawer's in the hands of the drawee of a bill of exchange (*h*).

There is another difference between the two instruments; in the case of a bill of exchange, the drawer is discharged by want of a due presentment to the acceptor; but in the case of a cheque, the drawer is not discharged by a delay in the presentment, unless it is shown that he has been prejudiced thereby; for instance, by the failure of the banker on whom it is drawn (*i*).

A cheque is not due before payment is demanded, and in this respect differs from all such bills of exchange as are payable on a fixed day (*k*).

In an action by the holder against the drawer of a dishonoured cheque, notice of dishonour is excused for want of effects in the hands of the drawee at the time when the drawer would reasonably expect the cheque to be presented

(*e*) *Alexander v. Burchfield*, 7 M. & G. 1060.

(*f*) Though, if the banker pay the cheque in ignorance of his customer's death, it would seem the payment is valid; *Tate v. Hilbert*, 2 Ves. jun. 118; *Bromley v. Brunton*, L. R., 6 Eq. 275. See, however, as to cheques payable to order, *Rolls v. Pearce*, L. R., 5 Ch. D. 730; and post, p. 88.

(*g*) *Billing v. Devaux*, 3 M. & G. 571, 572, 573.

(*h*) *Keene v. Beard*, 8 C. B., N. S. 372, 381; 29 L. J., C. P. 287, 290, per Byles, J.; and see several points of difference pointed out by Tindal, C. J., and Maule, J., in *Warwick v. Rogers*, 5 M. & G. 363; and by Parke, B., in *Ramchurn Mullick v. Luchmechund Radakissen*, 9 Moore, P. C. C. 48, 69; and in *Serle v. Norton*, 2 M. & Rob. 404, n.

(*i*) Ante, p. 49.

(*k*) Per Lord Kenyon, C. J., *Boehm v. Sterling*, 7 T. R. 430; *Alexander v. Burchfield*, 7 M. & G. 1067.

for payment, provided the drawer had no reasonable expectation that it would be paid (*l*). The want of effects which will excuse notice of dishonour need not be a want of any effects; it is sufficient if there are no effects sufficient for the payment of the cheque (*l*).

If there are funds in the hands of the banker sufficient to meet his cheque, the drawer will be entitled to notice, though he knew that the bank would not honour the cheque, for he would be entitled to say that they were bound to honour it, even though they had told him they would not (*l*).

(*l*) *Carew v. Duckworth*, L. R., 4 Exch. 313; 38 L. J., Exch. 149; *Wirth v. Austen*, L. R., 10 C. P. 689.

## CHAPTER XI.

## PERSONS ENTITLED TO SUE ON NON-PAYMENT OF CHEQUES.

THE bearer of a cheque, if payable to bearer, or to order (if indorsed generally, or in blank), is the person entitled to receive the money therein specified; and whoever has possession of it, as bearer, may maintain an action upon it (*a*). But the holder cannot sue the bankers upon whom it is drawn for refusing payment, in the absence of proof that it has been accepted by the bankers, or that they have entered into some binding engagement to pay him (*b*). The remedy of the holder on non-payment is against the drawer, and his remedy will be an action for damages against the bankers for dishonouring his cheque. A cheque payable to bearer may be indorsed, so as to entitle a holder to sue the indorser thereon (*c*). A cheque payable to order may be sued upon by the payee, without indorsement, and if indorsed, by the bearer or party entitled to the money.

(*a*) *Per* Martin, B., in *Ancona v. Marks*, 7 H. & N. 696; *Hodgson v. Anderson*, 8 B. & C. 342; *Pinto v. Santos*, 5 Taunt. 417.

(*b*) See ante, p. 8; *National Bank of the Republic v. Millard*, 7 Canada L. J., N. S. 44, Supreme Court, U. S. Mr. Justice Davis, in giving judgment there, said:—"On principle, there can be no foundation for an action on the part of the holder, unless there is a privity of contract between him and the bank. How can there be such a privity when the bank owes no duty and is under no obligation to the holder? The holder takes the cheque on the credit of the drawer, in the belief that he has funds to meet it; but in no sense can the bank be said to be connected with the transaction. If it were true that there was a privity of contract between the banker and holder when the cheque was given, the bank would be obliged to pay the cheque, although the drawer, before it was presented, had countermanded it, and although other cheques, drawn after it was issued, had exhausted the funds of the depositor." But Mr. Morse, in his *Treatise on Banks and Banking*, pp. 466, 469, elaborately and artificially argues in favour of a right of action by the holder against the banker on the ground of an implied promise which the law raises in his behalf from the usage or course of dealing of the parties or of the community generally. "There can be no possible difficulty," he says, "in assuming, in view of the well-known conduct of all banking institutions, and the multitude of daily transactions which the entire community bases and is obliged to base upon this well-known conduct, that the undertaking of the bank to pay the depositor's cheque is designed to enure, and by virtue of this intent and of usage in accordance therewith actually does enure, for the benefit of the holder of the cheque, and does raise such an implied agreement as will suffice to overthrow the technical obstacle to his obtaining his rights which grows out of a supposed want of privity between him and the bank."

(*c*) *Keene v. Beard*, 8 C. B., N. S. 372; 29 L. J., C. P. 287.

## CHAPTER XII.

## GIFTS OF CHEQUES.

A CHEQUE drawn by A., in favour of B. as a gift, cannot, according to the general principle that there must be a consideration for an undertaking not under seal, be enforced by B. in an action against A. (*a*). A cheque payable to bearer cannot be the subject of a good *donatio mortis causâ*, unless it is presented for payment or paid before the death of the donor (*b*). Where, however, the cheque is made payable to order, the rule, it seems, is otherwise (*c*).

Sometimes the gift of a cheque on death may operate as a declaration of trust in favour of the donee. A lady gave a cheque for 5,000*l.* to the surgeon who attended her, to be laid out in the erection, establishment, and support of a hospital. The money was invested by the surgeon in Consols in the names of himself and another as trustees, and both immediately after executed a deed of trust declaring the objects of the gift. The declaration of trust was not made known to the donor, who died a few days after its execution, but as the object of the gift did not exclude the acquisition of land, and the donor having died within twelve months after the execution of the deed, the gift was invalid under the Mortmain Act, 9 Geo. 2, c. 36 (*d*).

A cheque may be admitted to probate, as a paper of a testamentary character (*e*).

(*a*) *Easton v. Prutchett*, 1 C., M. & R. 808, where Lord Abinger, C. B., says:—"If a man gives money as a gratuity, it cannot be recovered back, because the act is complete; yet a man who promises to give money cannot be sued on such promise: and if so, I do not see how a promise in writing, not under seal, can have any binding effect." See *Hill v. Wilson*, 21 W. R. 757.

(*b*) *Melnes v. Dawson*, 5 Ex. 948; *Beak v. Beak*, L. R., 13 Eq. 489.

(*c*) *Tate v. Hilbert*, 4 Brown, C. C. 286; 2 Ves. jun. 111; *Hewitt v. Kaye*, 37 L. J., Chanc. 633; L. R., 5 Eq. 198; *Bromley v. Brunton*, L. R., 6 Eq. 275; *Rolls v. Pearce*, L. R., 5 Ch. Div. 730; 46 L. J., Chanc. 791; *Austin v. Mead*, 15 Ch. Div. 651.

(*d*) *Hawkins v. Allen*, L. R., 10 Eq. 246; 40 L. J., Chanc. 23.

(*e*) *Walsh v. Gladstone*, 1 Ph. 294; *Heming v. Clutterbuck*, 1 Bligh, N. S. 479; *Brine v. Ferrier*, 7 Sim. 549.

## CHAPTER XIII.

## PAYMENT OF LOST OR DESTROYED CHEQUES.

THE 17 & 18 Vict. c. 125, s. 87, enacts, that in case of any action founded on a bill of exchange, or other negotiable instrument, the Court or a judge may order that the loss of such instrument shall not be set up, provided an indemnity is given to the satisfaction of the Court or judge, or a master, against the claims of any other person upon such negotiable instrument (*a*). This provision only applies where an action has been brought and is pending on the lost instrument, and where the cheque is capable of circulation and negotiation (*b*).

The non-payment and probable loss of a cheque, delivered by the drawer to the payee, is not a good consideration to support a promise by the drawer to give a new cheque for the same amount to a third person to whom the payee had sent the lost cheque (*c*). A plaintiff failing to give or offer an indemnity may be compelled to pay the costs of the defendant incurred up to the time of his doing so (*d*).

A cheque of the Accountant-General in Chancery having been accidentally destroyed, the Court, though not quite satisfied as to the fact of its destruction, directed the issue of a new cheque, on the ground that the other cheque, being more than a year old, would not be paid, if presented (*e*).

(*a*) This section is retained in 18 & 19 Vict. c. 67, s. 7, and in 38 & 39 Vict. c. 77, s. 21. Bank notes and half notes are within the act; *McDonnell v. Murray*, 9 Ir. Com. Law Rep. 495; *Redmayne v. Burton*, 9 Jur. 21.

(*b*) See *Bevan v. Hill*, 2 Camp. 381.

(*c*) *Johns v. Mason*, 9 Hare, 29; 20 L. J., Chanc. 305.

(*d*) *King v. Zimmerman*, L. R., 6 C. P. 466.

(*e*) *Taylor v. Scrivens*, 1 Beav. 571.

## CHAPTER XIV.

## CRIMINAL OFFENCES IN RELATION TO CHEQUES.

Cheating by  
means of  
cheques.

FOR a person to give what purports to be his cheque upon his banker, in payment for goods, when in truth he has no account with the banker named, is a false pretence within the 24 & 25 Vict. c. 96, s. 88 (*a*). So, where a prisoner was charged with falsely pretending that a post-dated cheque, drawn by himself, was a good and genuine order for 25*l.*, whereby he obtained a watch and chain, and the jury found that before the completion of the transaction—of the sale and delivery of the watch and chain, by the prosecutor, to the prisoner—he represented to the prosecutor, that he had an account with the bankers on whom the cheque was drawn, and that he had a right to draw the cheque, though he postponed the date for his own convenience, which was all false, and that he represented that the cheque would be paid on or after the day of the date, but he had in reality no funds to pay it, the prisoner was held to be properly convicted (*b*).

It is no false pretence, as regards the banker, to draw on and present to him a cheque for a larger amount than you have in his hands (*c*). A. drew a bill on B., on whom he had no right to draw, in order to induce bankers to honour his cheque, which they did; and it was held not to be a false pretence, because A. only obtained credit, and not any specific sum on the bill (*d*). But to give a cheque by way of payment for an amount which exceeds

(*a*) *Reg. v. Jackson*, 3 Camp. 370.

(*b*) *Reg. v. Parker*, 2 Mood. C. C. 1; 7 C. & P. 825; see also *Reg. v. Walne*, 23 L. T. 748.

(*c*) *Per Maule, J.*, in *Reg. v. Garrett*, 23 L. J., M. C. 22.

(*d*) *Reg. v. Hawell*, 1 Mood. C. C. 224; see 11 Cox, C. C., App. xi., for precedents of counts in an indictment for presenting a false cheque.

the assets available to meet it, with the knowledge that there is no authority to overdraw, and that it will be dishonoured on presentation, renders the drawer liable to a conviction for false pretences (*e*). A cashier of a bank has a general authority to part with the bank's money in payment of such cheques as he may think genuine, and, therefore, when money has been obtained from a cashier at the bank on a forged cheque knowingly, it does not amount to larceny, but to obtaining the money by false pretences (*f*).

Formerly, the stealing of a cheque, *quà* cheque, did not amount to larceny, but now, by 24 & 25 Vict. c. 96, s. 27, it is made so (*g*). Stealing.

A person may be indicted for forging a cheque as "an order for the payment of money" under 24 & 25 Vict. c. 98, s. 39. If the charge in the indictment is for forging a warrant and order, proof of a document which is a warrant but not an order for the payment of money, will not support the indictment (*h*). Forging.

A cheque of a railway company, signed by the secretary, addressed to their bankers, directed the latter to pay to A. a shareholder, or his order, the sum therein mentioned. There was a memorandum at the bottom of the document, "The shareholder's name must be indorsed at the back of the cheque:" it was held, that a person who forged the shareholder's indorsement on the cheque was guilty of forging an order or a warrant for the payment of money (*i*).

Forging and uttering an indorsement on a cheque, with a view to get it cashed by the credit of the name, will

(*e*) *Reg. v. Hazelton*, L. R., 2 C. C. 134; 44 L. J., M. C. 11.

(*f*) *Reg. v. Prince*, 38 L. J., M. C. 8; 11 Cox, C. C. 193.

(*g*) *Reg. v. Walsh*, R. & R. 215; *Reg. v. Essex*, 1 D. & B. C. C. 371; 27 L. J., M. C. 20.

(*h*) *Reg. v. Williams*, 2 C. & K. 51. Filling a form of cheque already signed, with blanks left in it for the sum, is forgery; *Flower v. Shaw*, 2 C. & K. 703. So, filling in a blank cheque with a larger sum than that authorized by the drawer, is a forgery; *Reg. v. Wilson*, 17 L. J., M. C. 82.

(*i*) *Reg. v. Antey*, 1 D. & B. C. C. 294; 26 L. J., M. C. 190.

sustain an indictment for forgery, although the cheque is valid (*i*).

A cheque, although post-dated, is an order for the payment of money (*k*).

Where an instrument is, in any respect, incomplete, and therefore not operative, an indictment for forging, or feloniously uttering, an indorsement on it will not lie. Semble, however, the facts would support an indictment for forgery at common law (*l*).

A cheque drawn by a person in a fictitious name amounts to a forgery under the act, unless the cheque was drawn and uttered *as his own*, and it was so received by the payee, in which case his subscribing a fictitious name will not make it a forgery, the credit being there given wholly to himself without any regard to the name or any relation to a third party. Thus, the prisoner Robert Martin, in payment for a pony and cart purchased by him from the prosecutor, drew a cheque in the name of William Martin in the presence of the prosecutor upon a bank at which he, the prisoner, had no account, and gave it to the prosecutor as his own cheque drawn in his own name. At the time he drew the cheque, the prisoner knew that it would be, as in fact it was, dishonoured. The prosecutor received the cheque in the belief that it was drawn in the prisoner's own name:—Held, that the prisoner was not guilty of the offence of forgery (*m*).

On an indictment for uttering a forged cheque, it is not necessary to call the supposed maker to disprove an authority from him to any other person to sign in his name; it is sufficient to disprove the handwriting (*n*).

A cheque purported to be drawn by G. A. upon bankers; evidence that no person named G. A. kept an account with or had any right to draw on the bankers was

(*i*) *Reg. v. Wardell*, 3 F. & F. 82.

(*k*) *Reg. v. Taylor*, 1 C. & K. 213.

(*l*) *Reg. v. Harper*, 7 Q. B. D. 78; *Reg. v. Turpin*, 2 C. & K. 820.

(*m*) *Reg. v. Martin*, 5 Q. B. D. 34; see also *Dunn's case*, 1 Lea. C. C. 59.

(*n*) *Reg. v. Hawley*, 2 M. & Rob. 473.

held *primâ facie* sufficient proof that G. A. was a fictitious person (*o*). Upon an indictment for forging a cheque, dated Knighton, and purporting to be drawn by John Hust, proof that no John Hust lived at Knighton, who was likely to keep an account with a banker, was held sufficient to show that John Hust was a fictitious person (*p*).

To alter a cheque, which is crossed with the name of a banker, with intent to defraud, is a forgery (*q*).

In criminal proceedings, a cheque, although it may not be duly stamped, is admissible in evidence, by virtue of the exception contained in sect. 17 of the Stamp Act, 1870.

Unstamped  
cheques ad-  
missible in  
evidence.

(*o*) *Rex v. Backler*, 5 C. & P. 118.

(*p*) *Reg. v. Ashby*, 2 F. & F. 560.

(*q*) *Ante*, p. 91.

## CHAPTER XV.

## LETTERS OF CREDIT AND CIRCULAR NOTES.

Letters of  
credit.

A LETTER of credit is an instrument, in common use among bankers, for the transmission of money either within the United Kingdom or to the colonies, or to foreign countries (*a*). It is not negotiable as a cheque, but is only an authority from the banker who signs it to the banker or other person to whom it is addressed, upon advice, to honour the drafts of the person named in it, and who produces the letter; and consequently he alone is entitled to draw the drafts or to receive payment.

A letter of credit, saying "Please to honour the drafts of A. to the amount of 460*l*. and charge the same to the account of B.," is an authority to make the payment, but the possession of the document by the person to whom it is addressed does not prove that the payment has been made (*b*). In order to show that the payment has been made there must be a draft by A. in pursuance of the direction and authority of the letter (*b*).

As a letter of credit is not a negotiable instrument, if it is stolen, or lost, and the banker, upon whom the letter of credit is drawn, honours the drafts or pays the amount upon a forged signature, he is not thereby discharged; neither is the banker granting the letter of credit: for payment must be made in strict conformity with the letter (*b*).

The statute 16 & 17 Vict. c. 59, s. 19, does not apply to letters of credit (*c*).

(*a*) Chitty on Bills, 350 (10th edit.); Story on Bills, ss. 459—463 (4th edit.).

(*b*) *Orr v. Union Bank of Scotland*, 1 Macq. H. L. Cas. 513; 2 C. L. R. 1566; *British Linen Company v. Caledonian Insurance Company*, 4 Macq. H. L. Cas. 107; 7 Jur., N. S. 587.

(*c*) *British Linen Company v. Caledonian Insurance Company*, 4 Macq. 107. As to this statute, see p. 22.

A letter of credit, which had been issued by bankers in this country in favour of Mr. Robert Thomas with a request to honour his draft for the amount therein mentioned, was addressed to their agents, the Oriental Bank Corporation, Melbourne, in Australia; a person, having wrongfully obtained possession of it, presented it with a forged indorsement of the payee to a banker in this country to get cashed or collected for him, and was indicted for forging and uttering an order; at the trial evidence was given that, according to banking practice in this country, a letter of credit of this description was usually paid on the simple indorsement of the payee, but whether it would be so paid at Melbourne was not shown; though, according to usage, on the presentation of the letter of credit at Melbourne, the bank there would take pains to ascertain the identity of the person credited, and, on being satisfied, would credit him to that amount, and, in the terms of the letter of credit, would honour the draft of the party to the extent of the letter of credit.

It was objected, on behalf of the prisoner, that the indorsement was not shown to be an order, and Bramwell, B., said, "It is quite true that, if the bank at Melbourne chose to pay such a letter on the simple indorsement of the person credited, the latter could not afterwards oblige the bank to pay him a second time. But the letter of credit was directed to the Oriental Bank at Melbourne, which was to 'honour the draft' of 'Robert Thomas.' I think the simple indorsement in this country is not an order, not being within the original mandate, and I must direct the jury to acquit the prisoner. Perhaps," the learned judge added, "the prisoner might be indicted for the misdemeanor of attempting to obtain the money by false pretences" (*d*).

By the Companies Act, 1862, s. 41, a company having its liability limited, either by shares or by guarantee, shall

Issue by  
limited  
liability com-  
panies.

have its name mentioned in legible characters on letters of credit, purporting to be signed by or on behalf of the company; and by sect. 42, if a director, manager, or officer of the company, or any person on its behalf, signs, or authorizes to be signed, on behalf of the company, a letter of credit, wherein its name is not so mentioned, he shall be liable to a penalty of 50*l.*, and shall further be personally liable to the holder of such letter of credit, for the amount thereof, unless the same is duly paid by the company.

If the drafts drawn by the owner of the letters are not honoured, he may recover from the grantor monies paid by him in respect thereof, and the same rule applies where after payment of the drafts any surplus remains. It is his duty, however, first to restore the letters to the grantor (*e*).

Marginal  
letters of  
credit.

With respect to marginal letters of credit, which are letters of credit written in the margin of blank bills of exchange (*f*'), they are described in the report of a case in which their real character and operation are defined (*g*), and from which the following account is derived.

The course of dealing and practice relative to the issue and user of marginal letters of credit differs considerably in different parts of the mercantile world, and the terms of such issue and user depend upon the actual agreement between the parties, and upon the terms apparent on the

(*e*) *Confans Quarry Company v. Parker*, L. R., 3 C. P. 1.

(*f*) The form of a marginal letter of credit is as follows :

No. 39.

11,325 Credit for £2,000 stg. in duplicate. 4907.  
National Bank of Scotland, Edinburgh,  
24th June, 1864.

To Messrs. Fletcher & Company, China.

I hereby, for the National Bank of Scotland, authorize you to draw the annexed Bill of Exchange at six months' sight for Two thousand pounds sterling on Messrs. Glyn & Co., Bankers, in London, who will honour the same in conformity with its tenor, if presented along with this Letter of Credit within one year from this date.

THOS. ANDERSON, Secretary.  
JNO. J. SHEARER, P. Manager.

First of Exchange for £2,000 sterling. No.  $\frac{39}{4907}$  F.

Place and date of drawing, Shanghai, 5th April, 1865.

Six months after sight pay this first of Exchange (second of the same tenor and date not being accepted or paid), to our order, the sum of Two thousand pounds sterling, which charge to the National Bank of Scotland as per annexed Letter of Credit.

To Messrs. Glyn & Co.,  
Bankers, London.

Drawer signs here, FLETCHER & Co.

(*g*) *Maitland v. The Chartered Mercantile Bank of India, London and China*, 38 L. J., Chanc. 363.

face of such marginal letters of credit. It is a common, but by no means an invariable, practice, that when such marginal letters of credit are granted by a bank in this country, in favour of a firm carrying on business abroad, the bank granting the letters of credit requires the security of some firm carrying on business in England for the repayment of any money which may be paid in respect of any draft drawn under such letter of credit; but if the credit of the foreign firm were good, such security would not in all cases be considered necessary; and, accordingly, whether such security is given or not depends on the credit and standing of the firm in whose favour such letters of credit are granted. The marginal letters of credit which are issued in this country, according to the usual practice, are sent to the foreign firm, not merely to enable it to raise funds for buying produce to be consigned to England, but as a guarantee to the purchasers of the bills of such foreign firm that such bills will on presentation be accepted, and also to give more complete facilities for raising money to the foreign firm in whose favour such marginal letters of credit are issued (*h*).

Marginal letters of credit are usually either "open credits" or "documentary credits." "Open credits" are, on the face of them, engagements on the part of the person giving such credits to accept the drafts drawn under such credits unconditionally, except that generally there is a certain limit as to the time within which the credits are to be available; whereas "documentary credits" are engagements to accept bills drawn under them subject to a condition or a proviso on the face of the credit that the drafts, when presented for acceptance, are to be accompanied by bills of lading or shipping documents (*i*).

Open credits  
and document-  
ary credits.

A *bonâ fide* holder of a bill of exchange, drawn under

(*h*) Ibid. at pp. 366-7.

(*i*) *In re Agra and Masterman's Bank, Ex parte Asiatic Company*, L. R., 2 Ch. 391; *Banner v. Johnston*, L. R., 5 H. L. Cas. 157; 40 L. J., Chanc. 730; *Union Bank of Canada v. Cole*, 47 L. J., C. P. 100—C. A.

one of these open letters of credit and taken by him, can maintain an action against the grantor of the letter of credit in case of his refusal to accept the bill. "The marginal note which is put upon the face of the bill of exchange," Vice-Chancellor James said, "is intended to be a representation or a promise to any person who should become in due course the holder of that bill of exchange, that the bill would be duly honoured, and it would be clearly a contract with the owner, which would be a legal contract, the right of which would attach with the bill of exchange, and in that sense the contract is negotiable and assignable with the bill of exchange" (*j*).

So, where open letters of credit were granted to Fletcher & Co., a China firm, on the guarantie of Maitland & Co., an English firm, and Fletcher & Co., in fraud and violation of their agreement with Maitland & Co., drew bills under them not protected by shipping documents, and indorsed them for value to a bank who had no actual notice of the agreement between Fletcher & Co. and Maitland & Co.; Vice-Chancellor James held, that the bank was entitled to require the grantors of the letters of credit to accept the bills, and that Maitland & Co. had no equity to restrain them from procuring such acceptance (*j*).

But as to the custom alleged that, according to the ordinary course of dealing in reference to letters of credit granted to foreign firms, the foreign firm could only obtain letters of credit upon the guarantie of some English firm, and that the foreign firm stipulated to use the letters of credit only for the purpose of buying goods to be consigned to England, and to transmit the bills of lading to the English firm as a security for the repayment of the bills of exchange drawn under the letters of credit by a mail not later than that which carried the bills of exchange; the Vice-Chancellor determined no such custom existed as Maitland & Co. averred, and that even if there was such a custom, the rights of the bank as a *bonâ fide* holder

(*j*) *Maitland v. The Chartered Mercantile Bank of India, London and China*, 38 L. J., Chanc. 363.

for value could not be affected by the mere constructive notice of the agreement between Maitland & Co. and Fletcher & Co. which the custom would imply. "It is quite a novelty," the Vice-Chancellor observed, "to me to have it suggested that the negotiability of a negotiable instrument is to be affected by any private arrangement of that kind, which parties do not choose to put on the face of the document. That distinction seems to me to be actually expressed in the paragraph of the answer which draws a wide distinction between an open letter of credit and a documentary letter of credit. If it were intended to limit Fletcher & Co. in the use of this letter of credit as between themselves and the world at large to a use for mercantile purposes connected with the purchase of goods, it would have been very easy to have expressed upon the face of the document that it was to be accepted if presented accompanied by bills of lading, or other documents representing mercantile transactions" (k).

An open letter of credit constitutes also a contract to the benefit of which persons taking and paying for bills on the faith of it, are entitled in equity, without regard to any equities between the bank granting it and the parties to whom it is addressed, and the holder is entitled to prove on the winding-up of the bank for the amount due on the bills without regard to the state of the account between the bank and the addressees of the letter of credit (l).

An indorsee of a marginal letter of credit, not being on the face of it a document of credit, is not bound, in the absence of notice, to inquire whether it is being used for the purposes for which the credit was given (m).

But when a bank issues a letter of credit, on the terms that the bills which they agree to accept are to be covered by bills of lading to a like amount, suspension of payment

(k) Ibid. at p. 368, and see ante, p. 97.

(l) *In re Agra and Masterman's Bank, Ex parte Asiatic Banking Company*, 2 L. R., Ch. 391.

(m) *Maitland v. Chartered Mercantile Bank of India, London and China*, 2 H. & M. 440; 12 L. T., N. S. 372.

by the bank, before there has been time for the letter of credit to be used, is not a breach or a repudiation of the contract; inasmuch as permission might have been given to the liquidators under the winding-up to negotiate the bills, and a claim by the holder of the letter of credit for damages for the alleged breach will be disallowed (*n*).

Where the grantor of a marginal letter stops payment, and fails to meet it, the grantee is entitled to recover commission, notarial and all other necessary expenses (*o*).

A bank granted a letter of credit to a company on terms that the company should ship tea and forward bills of lading, invoices, and policy of insurance on the tea to the bank, and should also draw on Barber & Co. bills, to be accepted by Barber & Co. to an amount sufficient to cover the amount authorized by the letter of credit. Barber & Co. guaranteed the performance by the company of these terms "holding themselves responsible for the same." The company drew on the bank, and the bank accepted the bills, but owing to the failure of the bank after the dates when the bills were drawn, and before they became due, the company shipped no tea, and did not perform any of the terms agreed on. All the bills were eventually paid:—It was held, that the failure of the bank was no reason why the company should not have performed its part of the contract, and that Barber & Co. were not relieved from their guarantie (*p*).

Stamping.

By the Stamp Act, 1870, s. 48 (1), the term "bill of exchange" for the purpose of the stamp duties includes (*inter*

(*n*) *In re Agra Bank, Ex parte Tondeur*, L. R., 5 Eq. 160.

(*o*) *Prehn v. Liverpool Bank*, L. R., 5 Ex. 92; 39 L. J., Exch. 41; *In re General South American Company, Ex parte Banco de Lima*, 7 Ch. D. 537; 47 L. J., Chanc. 67; 37 L. T. 599; 26 W. R. 232. As to proving in winding-up companies, see *Barned's Banking Company*, L. R., 5 Ch. 167; *Kellock's case*, L. R., 3 Ch. 767; *Forwood's Claim*, L. R., 6 Ch. 18. By the Judicature Act (38 & 39 Vict. c. 77), s. 10, the rules in a winding-up of a company are assimilated to those in bankruptcy. See *In re Westbourne Grove Drapery Company*, L. R., 5 Ch. D. 248; *In re Suche*, 1 Ch. D. 48; *In re Withernsea Brickworks Company*, 16 Ch. D. 337; *Thomas v. Patent Lionite Company*, 17 Ch. D. at p. 258.

(*p*) *Ex parte Agra Bank, In re Barber & Co.*, L. R., 9 Eq. 725; 39 L. J., Bank. 39.

*alia*) a letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned (*q*); but (*4*) a letter of credit granted in the United Kingdom authorizing drafts to be drawn out of the United Kingdom payable in the United Kingdom is exempt from duty.

Circular notes are instruments similar to letters of credit, drawn by bankers in this country upon their foreign correspondents, in favour of persons travelling abroad (*r*). The persons in whose favour these notes are granted usually carry with them a letter containing their signature (called a letter of indication), for exhibition to the correspondents on presentation of the notes, and for comparison with the signature, which the holders are required to give before payment, in order to satisfy the correspondents of their identity. A banker is not bound to return the amount paid for a circular note so long as the note is outstanding, and there remains a possibility of his being called upon to pay a correspondent who may cash it. The banker, in such case, before he returns the money paid for the note, is entitled to receive a sufficient indemnity in respect of the outstanding note, which is only enforceable under the terms of the 17 & 18 Vict. c. 125, s. 87. In case of its non-negotiation the banker is bound on the production of the circular note to return the money (*s*).

Circular  
notes.

(*q*) The 16 & 17 Vict. c. 59, Sched., defined a letter of credit to be "a document or writing whereby any person to whom any such document is, or is intended to be, delivered or sent, shall be entitled, or be intended, to have credit with, or in account with, or to draw upon any other person for, or to receive from such other person, any money therein mentioned." Letters of credit were expressly chargeable with the stamp duty of one penny, imposed by that statute upon drafts payable to order on demand; but letters of credit, whether drawn in sets or not, which were sent by persons in the United Kingdom to persons abroad, authorizing drafts on the United Kingdom, were exempt. This statute is repealed.

(*r*) *Hare v. Copland*, 13 Ir. Com. Law Rep. 443.

(*s*) *Conflans Stone Quarry Company v. Parker*, 37 L. J., C. P. 51; L. R., 3 C. P. 1.

## CHAPTER XVI.

## ORDERS TO BANKERS.

I. *Orders to Pay.*

*Bills of Exchange.*—We will next pass to the consideration of the duties of bankers, and their liabilities and rights, as regards bills of exchange made payable at their banking houses.

General or  
qualified  
acceptance.

Formerly, it was for a long time much disputed whether a bill of exchange drawn generally, but accepted payable at a particular place named on it, ought to be presented at that place, in order to ground a cause of action by the holder against the acceptor. At length this doubt was set at rest by a decision of the House of Lords, which declared the law to be, that an acceptance made payable at a specified place was a qualified acceptance, which imposed upon the holder, in an action against the acceptor, the necessity of stating and proving presentment at that place, in order to recover on the bill (*a*). The Legislature, however, thought this part of the law required some alteration, and accordingly the statute 1 & 2 Geo. IV. c. 78, was passed, enacting, that an acceptance payable, on the face of it, at the house of a banker or other place shall be considered to be a general acceptance, unless it be expressed to be payable there *only*, and *not otherwise or elsewhere* (*b*). The statute, it is to be observed, only mentions acceptances; it has been decided that a drawer cannot render the bill payable only at a particular place, by stating it to be so in the body of the instrument, so that

(*a*) *Rowe v. Young*, 2 B. & B. 165; 2 Bligh, 391.

(*b*) The holder of a draft may refuse to take a special acceptance, and resort to the drawer at once. *Gammon v. Schmoll*, 5 Taunt. 353. A person who takes a qualified acceptance is bound to give notice to the drawer: for *non constat* that he will assent to the qualified acceptance, see 9 M. & W. 509. A draft accepted payable at a banker's is not a special or qualified acceptance, and is generally esteemed of higher commercial credit than a special or qualified acceptance, or an acceptance not made payable at a banker's.

a bill made by the drawer, payable at a particular place, is nevertheless accepted generally, unless the acceptor accepts it in the above terms, saying, that it shall be paid at that place only, and not otherwise or elsewhere (*c*).

Since the statute there are three different modes (two of them, however, differing chiefly in form) in which a bill may be accepted; 1, generally; 2, payable at a banker's named; 3, payable at a particular banker's only, or not otherwise or elsewhere (*d*). Now, if the drawee accepts generally, there can be no doubt that he undertakes generally to pay the bill, at maturity, when presented to himself; if he accepts in the second form, then the holder has the option either of presenting to the acceptor himself, or at the bankers specified, and that within banking hours; for in that case the acceptor's undertaking is to pay the bill, at maturity, on its being presented in either way; if the acceptor adopts the third mode, then, of course, he excludes the holder from any other mode of presentment, than to the banker named, and that within banking hours (*e*). Hence, in suing an *acceptor* of a bill accepted payable at a banker's in the second mode, it is not necessary to allege or prove presentment there (*e*). In suing the *drawer*, or an *indorser*, however, the case is different; for, as against them, it is still necessary, if the bill is accepted payable at a banker's named by the acceptor, to prove presentment there (*f*); so if made payable in the body at a banker's and accepted generally (*f*); and if the

(*c*) *Selby v. Eden*, 3 Bing. 611; 11 Moore, 511; *Fayle v. Bird*, 6 B. & C. 531.

(*d*) It will suffice to accept payable at such a bank, "and not otherwise," without adding "only." *Higgins v. Nichols*, 7 Dowl. 551.

(*e*) *Halstead v. Skelton*, 5 Q. B. 92; *Bailey v. Porter*, 14 M. & W. 44. There is no objection, in declaring in an action against an acceptor, to a statement that the bill is accepted payable at a particular bankers, though, in fact, the acceptance is in the second form. *Blake v. Beaumont*, 4 M. & G. 7; 1 Dowl. (N. S.) 697. That the presentment must be made within banking hours, see *Parker v. Gordon*, 7 East, 385; *Whitaker v. Bank of England*, 1 C., M. & R. 744; *Wilkins v. Jadis*, 2 B. & Ad. 188; it may be made after, if the bank is not shut, or if any one is there to say if there are no orders. *Garnett v. Woodcock*, 6 M. & S. 44.

(*f*) *Gibb v. Mather*, 8 Bing. 214; 2 C. & J. 254; *Saul v. Jones*, 1 El. & Bl. 59; 28 L. J., Q. B. 37.

bill is *drawn* payable at a particular place, in order to charge the *drawer*, or an *indorser*, it is necessary to show a presentment at that place; for such must have been the case before the statute, and the statute was not intended to alter, and has not altered, the liability of drawers or indorsers of bills of exchange; it is confined in its operation to acceptances alone (*g*).

If a bill of exchange is accepted, payable at bankers', and, in the course of business, is indorsed to the bankers, they, on suing the indorser, have no need to show that they presented it to the acceptor; for, as the bankers, at whose house the bill was to be paid, were themselves the holders of it, it was a sufficient demand, for them to turn to their books and ascertain the state of the acceptor's account with them, and a sufficient refusal, to find that he had no effects in their hands (*h*); and a letter written, on the day when the bill became due to the indorser, on behalf of the bankers, stating the acceptor's bill to be unpaid, and requesting the indorser's immediate attention to it, is sufficient notice of dishonour (*h*).

Precisely the same has been laid down, as the law with respect to a promissory note, stated by the maker in a *memorandum* to be payable at a banker's, to whom it was indorsed in the course of business, and who sued the indorser (*i*).

Where the drawer of a bill of exchange, accepted generally (subsequently to the passing of the 1 & 2 Geo. IV. c. 78), added the words "payable at R. & Co.'s, bankers, London," without the knowledge of the acceptor, and then indorsed it for valuable consideration, the bill being overdue, and the indorsee privy to the alteration, the alteration was held to be a material one, and the acceptor was held to be discharged; notwithstanding the argument which was

(*g*) See *Boydell v. Harkness*, 3 C. B. 168; 4 D. & L. 179; *Harris v. Parker*, 3 Tyrw. 370; *Parks v. Edge*, 1 C. & M. 429.

(*h*) *Bailey v. Porter*, 14 M. & W. 44.

(*i*) *Scamlderson v. Judge*, 2 H. Bl. 409.

pressed, that, since the statute, this was only a general acceptance, and that no demand was necessary against the acceptor, and that, consequently, in an action by the indorsee against the acceptor, it was not possible to contend that he was prejudiced (*l*).

A bill was accepted, payable at a bank, which was also that of the drawer; the drawer discounted it with them, and indorsed to them; they rediscounted, and, on maturity, paid it, without indicating to the holder whether they paid as indorsers, or as agents for the acceptor. The acceptor's account being overdrawn, the bank gave notice of dishonour to the drawer, and he was debited with the amount. It was held, they had a right to pay the bill as indorsers, taking time to inquire if they would honour the bill or not (*m*).

Again, where a drawer, after getting a bill accepted, payable at his bankers, kept the bill by him for some years, during which period the bankers became bankrupt, and then having erased their names, and substituted the name of another banker, without the knowledge of the acceptor, indorsed the bill, it was decided that the acceptor was discharged, the alteration being considered to be material (*n*). Whether an acceptance is or is not a conditional one is a question of law (*o*).

A bill of exchange was accepted "payable on giving up bill of lading for seventy-six bags of clover seed per Amazon, at the London and Westminster Bank, Borough Branch:" it was held, that this was a conditional acceptance to this extent, that the holder was only entitled to receive the amount on delivering over to the acceptor the bill of lading, but that he was not bound to present the bill on the precise day on which it became due, and con-

(*l*) *Mackintosh v. Haydon*, R. & M. 362; see *Burchfield v. Moore*, 23 L. J., Q. B. 261; 3 El. & Bl. 683. As to the effect of altering a negotiable instrument, see *Master v. Miller*, 1 Sm. L. Cas. 857, 8th ed., and notes thereto.

(*m*) *Pollard v. Ogden*, 2 El. & Bl. 459.

(*n*) *Tidmarsh v. Grover*, 1 M. & S. 735.

(*o*) *Sprout v. Mathews*, 1 T. R. 182.

sequently that the acceptor was not released from his liability (*p*).

The fact of returning a bill, accepted payable at the acceptor's bankers, to the indorsee's bankers, at the Clearing House, with "orders not to pay" written on it, and "cancelled by mistake" also, does not enable the indorsee to recover against the bankers, as for money had and received; but if the bankers have been guilty of negligence or want of due and reasonable care, and special damage has accrued therefrom to the holder, an action may be maintained against them (*q*).

If a bill is accepted, payable at a particular town, presentment, it is said, at all the banking houses in the town is sufficient (*r*).

If a bill is made payable at a particular bank by the acceptor, then, in an action by the indorser against the drawer, it is not necessary to allege a presentment to the acceptor at the bank; it has been decided to be enough to aver the presentment to have been made there (*s*).

As has been stated, where a bill is accepted payable at a banker's, and the acceptor's address also appears on the bill, the holder has not the option of presenting either at the place named in the address or at the place named in the acceptance, in order to charge the drawer or an indorser; but he must present it at the place indicated by the acceptance, viz., at the particular banker's mentioned (*t*). If, however, the holder presents at the bank, and is refused payment, he may sue the other parties to the bill without any other presentment (*u*). An acceptor, having funds to meet

(*p*) *Smith v. Vertue*, 9 C. B., N. S. 214; 30 L. J., C. P. 56. See also *Banbury v. Lissett*, 2 Str. 1211; *Smith v. Abbott*, ib. 1152.

(*q*) *Warwick v. Rogers*, 5 M. & G. 310; *Wilkinson v. Johnston*, 3 B. & C. 428; *Ingham v. Primrose*, 28 L. J., C. P. 294; *Norelli v. Rossi*, 2 B. & Ad. 757; *Raper v. Birkbeck*, 15 East, 17; *Prince v. Oriental Bank Corporation*, L. R., 3 App. Cas. 325; 26 W. R. 543.

(*r*) *Hardy v. Woodroffe*, 2 Stark. 319.

(*s*) *Shelton v. Braithwaite*, 8 M. & W. 252; *Philpot v. Bryant*, 3 C. & P. 244.

(*t*) *Saul v. Jones*, 1 El. & Bl. 59; 28 L. J., Q. B. 37.

(*u*) *Mackintosh v. Haydon*, R. & M. 362; *Hawkey v. Berwick*, 4 Bing. 135.

the bill in the bankers' hands, is, it is submitted, not exonerated if they fail after the maturity of the bill, but before it has been presented, provided the holder has not been guilty of laches (*x*).

A bill, dated September 8th, 1856, was drawn on B. & Co., payable in London at four months after date. It was accepted as follows: "Accepted payable at Messrs. Overend, Gurney & Co., London. No. 1756. Due 11th Dec. 1856. B. & Co.:" it was held, that the words "Due 11th Dec. 1856," did not qualify the acceptance, but were, at most, an inaccurate description of the date of the bill (*y*).

A person who accepts a bill, payable at his bankers', is held thereby to give authority to the bankers to apply to the payment of it any funds of his in their hands, and there is no necessity for them to have any other or more specific authorization than the terms of the acceptance itself (*z*). Bankers refusing to pay such an instrument when presented are liable to be sued by their customers (*a*). The like authority would also be given to pay a promissory note which the customer has made payable at his bankers'. But from what has already been laid down, to the effect that bankers are bound to know the handwriting of their customer, it is manifest they would not be exonerated if they paid the bill or note, and it turned out that the bill or note was forged (*b*).

*Bill, to whom payable.*—A banker paying a bill, accepted by a customer as above, and bearing an indorsement purporting to be in the handwriting of the payee, but being, Bill, to whom payable.

(*x*) *Schag v. Abitol*, 4 M. & S. 462; *Turner v. Haydon*, 4 B. & C. 1; *Rhodes v. Gent*, 5 B. & A. 246.

(*y*) *Fanshawe v. Peet*, 2 H. & N. 1; 26 L. J., Exch. 314.

(*z*) *Kymer v. Laurie*, 18 L. J., Q. B. 218. The bankers cannot sue on the bill, for it is *functus officio*, by the law merchant, when once paid by or on the behalf of the acceptor. See also *Whittaker v. Bank of England*, 1 C. M. & R. 744; *Farley v. Turner*, 26 L. J., Chanc. 710.

(*a*) *Hill v. Smith*, 12 M. & W. 618; *Bell v. Carey*, 8 C. B. 887.

(*b*) *Smith v. Mercer*, 6 Taunt. 76; 1 Marsh. 453; *Woods v. Thiedeman*, 1 H. & C. 478.

in fact, a forgery, and being accepted after this and other indorsements had been made on the bill, and presented at the Clearing House by a banking firm, who were indorsees, was not, it has been held, justified, by reason of such forged indorsement, in paying to the holder or indorsee, who could not give a legal discharge, and consequently the banker could not debit the account of the acceptor with the sum paid (*c*). As to his right to recover as against the holder of the bill the rule would seem to be that he is so entitled, if the forgery has been immediately discovered, and notice given to the holder (*d*).

If, when a person accepts a bill payable at his bankers', his account with them is in such a state as not to be adequate to pay the whole amount for which the bill is accepted, and they pay the whole amount, for the honour of their customer, they would be entitled to recover from the customer the difference between the amount of his moneys in their hands, and the sum in the bill, either as so much money lent to him, or paid for his use. But in order to recover the amount, the bankers must prove the indorsement by the payee, as well as the acceptance by their customer; if either is a forgery, they will not be entitled (*e*).

A banker, receiving a sum for the express purpose of taking up a bill made payable at his bank (which purpose should be expressed in writing in order to avoid any question as to proper authority), without objection at the time, cannot apply it to discharge the amount by which the customer paying in the money has overdrawn his account, nor ought he to pay cheques, drawn subsequently to the bill, before he pays it (*f*).

Bill when  
paid.

*Bill when paid.*—Next, when is a bill made payable at a banker's said to be paid? Now, in a case of a contract

(*c*) *Tucker v. Robarts*, 16 Q. B. 560; *Hall v. Fuller*, 5 B. & C. 750.

(*d*) *Cor v. Masterman*, 9 B. & C. 902; *Smith v. Mercer*, 6 Taunt. 76.

(*e*) *Forster v. Clements*, 2 Camp. 17.

(*f*) *De Bernales v. Fuller*, 14 East, 590, n.

to pay money, that can only properly be called payment, which is payment according to, and in the terms of, the contract (*f*); so that payment, by a stranger, does not discharge the party contracting to pay, unless made by the stranger as his agent, and with his prior authority or subsequent ratification. Hence, payment by a stranger of the amount of a bill of exchange to the bankers, at whose house it was made payable by the acceptance, under an arrangement with them, whereby the person paying obtained possession of the bill for a collateral purpose of his own, is not a payment of the bill by the acceptor (*g*).

*Payment of Bills of Exchange by Cheques Provisional or Absolute.*—The branch bank of the Bank of England at Newcastle discounted a bill of exchange drawn by a customer upon H. & Co., and accepted by them payable at the bank of L. & Co., also bankers at Newcastle. According to the practice prevailing among bankers at Newcastle, the branch bank, on the morning when the bill became due, took it to L. & Co., who marked it for payment, and gave a credit note, indicating that it with other moneys was in order for payment and would be paid. About 2 P.M. on the same day, a clerk of the branch bank, in accordance with the practice, took all the cheques which had been received, drawn on L. & Co., together with the credit note, to the bank of L. & Co. The credit note was admitted into the total amount, and a cheque upon the branch bank was in accordance with the practice handed by L. & Co. to the clerk for the amount of the balance due to the branch bank. At 3 P.M. the banks at Newcastle close to the public, but it is the practice for the bankers who keep accounts with the branch bank to attend at such bank, before it finally closes for the day at 4 P.M.,

Payment by  
cheques pro-  
visional or  
absolute.

(*f*) *Simpson v. Eggington*, 24 L. J., Exch. 313; 10 Exch. 845; *Church v. Bishop*, 2 Ves. sen. 272; *Smith v. Craven*, 1 C. & J. 500.

(*g*) *Deacon v. Stodhart*, 2 M. & G. 317; see *Cook v. Lister*, 13 C. B., N. S. 543; 32 L. J., C. P. 121.

for the purpose of having the day's accounts investigated, and of rectifying any mistakes or errors which may have arisen in the course of the day, and finding and striking the final balances between them. When the bank of L. & Co. closed at 3 o'clock it was ascertained that H. & Co. had stopped payment, and that their balance was not sufficient to meet the bill. Notice was at once and before 4 P.M. given to the branch bank that the bill had been paid in error, and they were requested to take it back. Before such notice was received, the account of L. & Co. had been debited with the amount in the accounts of the branch bank. The Court held, that as it was not shown that the giving the cheque was provisional only, or subject to rectification upon going over the accounts later in the day, such giving the cheque by L. & Co. amounted to payment of the bill of exchange to the branch of the Bank of England, and that the customer was entitled to have credit with them for the amount of the bill (*i*).

Refusal to pay.

*Refusal to pay.*—No action will lie by the holder against a banker for refusing to pay a bill so accepted, there being no privity between them (*k*).

Specific appropriation of moneys to take up bills.

*Specific Appropriation of Moneys to take up Bills.*—But money paid in, by a customer, expressly for the purpose of meeting a bill, accepted by him, and lying at the bank for payment, is, so far as he is concerned, money paid and received to the use of the holder of the bill, and cannot be applied to the general account of the customer (*l*).

But where a person paid a sum into a country bankers' with written directions to apply it to meet a bill of exchange payable the next day at the country bankers'

(*i*) *Pollard v. Bank of England*, 40 L. J., Q. B. 233; L. R., 6 Q. B. 623.

(*k*) *Stewart v. Fry*, 1 Moore, 74; 7 Taunt. 339; *Hill v. Royds*, L. R., 8 Eq. 290; 38 L. J., Ch. 538.

(*l*) *De Bernales v. Fuller*, 14 East, 590, n.; *Hill v. Smith*, 12 M. & W. 618; *Farley v. Turner*, 26 L. J., Chanc. 710.

London agents, and the country bankers stopped payment the next day without having advised their London agents of the payment of the sum, and the bill on being presented was dishonoured, and the country bankers *having made no specific appropriation of the sum*, he was only entitled to prove as a general creditor (*m*).

Customers of country bankers paid in to the bankers' a sum of money in bank notes, and also some bills of exchange, to be remitted to London in order to meet certain acceptances. The bankers sent to their London agents the bills, and some bank notes, with a letter directing them to pay a certain sum of money, also giving them notice of the acceptances as payable at their bank, and giving directions as to other business. The country bankers stopped payment, owing a large balance to the London bankers:—Held that, as between the country customers and the London bankers, there was no appropriation of the bills and notes to meet the acceptances, and that the London bankers could retain the bills and notes without meeting the acceptances (*n*).

*Cancellation by Bankers by Mistake.*—If a banker, at whose house a bill is accepted payable, by mistake (not under circumstances showing want of due care) cancels the acceptance and refuses to pay the bill, he does not necessarily render himself liable to the holder, in an action on the case, or otherwise; for instance, he will not be liable, if he has no effects of the acceptor's to meet the bill (*o*). Where, on the other hand, he has been guilty of such

Cancellation  
by mistake.

(*m*) *Moore v. Bushell*, 27 L. J., Exch. 3; *Farley v. Turner*, *supra*; *Hill v. Royds*, *supra*. See also *Thompson v. Simpson*, L. R., 5 Ch. App. 659; *Louisiana Bank v. Bank of New Orleans*, L. R., 6 H. L. Cas. 352; *Barned's Banking Company, In re, Massey, Ex parte*, 39 L. J., Chanc. 635.

(*n*) *Johnson v. Roberts*, L. R., 10 Ch. App. 505; 44 L. J., Chanc. 678.

(*o*) *Novelli v. Rossi*, 2 B. & Ad. 757; *Warwick v. Rogers*, 5 M. & G. 340, 352. Though the right to sue on bills is generally destroyed by cancellation, other rights are not necessarily so affected. See *Iglesias v. Mercantile Plate Bank*, 3 C. P. D. 60, 330.

want of due care, and damage has ensued in consequence to the holder, an action will lie against him (*p*).

Refusal to  
take.

*Refusal to take.*—The holder of a bill may refuse, as has already been stated, to take a special or a qualified acceptance; on the other hand, an acceptor may refuse to pay a bill, which, after a general acceptance by him, has been, without his consent, altered so as to appear to be payable at a banker's. The ground is, that the contract is, by the alteration, made a different one from that into which he entered (*q*). But it does not appear that such an alteration of the bill, as an acceptance by mistake, *e. g.*, as in the last paragraph, operates to affect in any way the liabilities of the other parties to the bill, both because such is not, it is believed, the usage of merchants, and because such alteration does not, in fact, vary the contract into which the other parties entered, with respect to the bill; for the liability, which they originally undertook, was to pay the bill, in case the drawee did not, and the refusal to accept merely ascertains and announces that he will not make himself liable to pay. It is, therefore, submitted, that such alteration is not a material alteration, within the meaning of the principle as applied to deeds and contracts, so as to destroy the validity of the instrument *in toto* (*r*).

Bill payable  
in case of  
need.

The holders of a bill, through their agents in London, presented it at the bank at which it was made payable by the acceptor; on its being dishonoured, they further presented it at the bank at which it had been specially indorsed payable "in case of need" by the indorsers; there also it was dishonoured. The agents, on the same day, sent the bill by post to the holders in Liverpool, who, on the day following, sent it to the indorsers; the Court held,

(*p*) See *Ingham v. Primrose*, 28 L. J., C. P. 294; 7 C. B., N. S. 82. As to cancellation by mistake by other parties not destroying a bill, see *Raper v. Birkbeck*, 15 East, 17; *Davidson v. Cooper*, 11 M. & W. 778.

(*q*) *Burchfield v. Moore*, 23 L. J., Q. B. 261; 3 El. & Bl. 683.

(*r*) *Parry v. Nicholson*, 13 M. & W. 780.

that no sufficient notice of dishonour had been given in the first instance, and that the actual notice was a day too late (*s*).

*Promissory Notes.*—Promissory notes, it should be observed, are not within the above-mentioned statute 1 & 2 Geo. IV. c. 78; the consequence is, to make it necessary, in suing on a promissory note made payable in the body of it at a bank, to aver in the statement of claim presentment at the bank (*t*), and to prove it at the trial, if denied; and, in this respect, there is no distinction between notes which are negotiable and those which are not (*u*).

Promissory  
notes.

Where, however, the place of payment is not mentioned in the body of the note, but merely in a memorandum at the foot, then it is no part of the contract that the note should be payable at the bank, or place mentioned, and it is not necessary to present (*x*), or allege presentment (*y*).

When a promissory note is made payable at a banking house, it is not necessary to prove that the banker had notice of its dishonour (*z*).

## II. Orders other than mere Orders to pay.

Hitherto we have been considering those orders to pay commonly coming under a banker's notice, but besides these there are other orders respecting the funds of a customer, not strictly orders to pay, and less frequently to be met with in practice. The first of these are what

(*s*) *In re Leeds Banking Company, Ex parte Prange*, L. R., 1 Eq. 1; 35 L. J., Chanc. 33.

(*t*) *Emblin v. Dartnell*, 12 M. & W. 830; *Vanderdonckt v. Thellusson*, 19 L. J., C. P. 13; 8 C. B. 812; *Sands v. Clark*, 8 C. B. 751.

(*u*) *Spindler v. Grellett*, 1 Exch. 384.

(*x*) *Williams v. Waring*, 10 B. & C. 2.

(*y*) *Saunderson v. Judge*, 2 H. Bl. 510; *Masters v. Baretto*, 19 L. J., C. P. 50; *per Lord Campbell, C. J.*, in *Warrington v. Early*, 23 L. J., Q. B. 48.

(*z*) *Pearse v. Pemberthy*, 3 Camp. 261; *Smith v. Thatcher*, 4 B. & Ald. 200.

may be termed orders in the nature of an appropriation or assignment of funds in favour of a third party.

Questions frequently arise as to how far a banker who has received an order to appropriate certain funds of his customer in favour of a third party, which order has been subsequently countermanded, is justified in nevertheless making the payment. Before the Judicature Acts, the rule in *law* apparently was this:—If the revocation was made before the banker had assented to the appropriation, and before that assent had been communicated to the payee, the banker was bound to act upon it; and if he made the payment he did it at his risk, and could not charge his customer therewith (*a*); the reason of this being that until the assent had been given and communicated to the payee no property in the funds passed to him, and the customer's right of control over them still continued (*b*). In equity, the assent of (*c*), or even the communication to, the banker was immaterial (*d*), so far as the assignee's right as against the assignor went, for an order given by a debtor to his creditor upon funds in the hands of a third party has always been held to be sufficient to constitute an equitable assignment (*e*). That the assignee should have had notice of the assignment, however, was absolutely necessary; for it has always been a well-established principle of equity that a mere order from a creditor to his debtor to pay a third person, uncommunicated to such person, passes no interest in the funds so directed to be paid (*f*). It must have appeared, moreover, from the order that there was an intention to charge the funds in

(*a*) See *Gibson v. Minet*, 2 Bing. 7; *Williams v. Everitt*, 14 East, 582; *Morrell v. Wooten*, 16 Beav. 197; *Hodgson v. Anderson*, 8 B. & C. 342.

(*b*) *Williams v. Everett, Walker v. Rostron*, 9 M. & W. 411; *Lily v. Hays*, 5 A. & E. 548; *Noble v. National Discount Company*, 5 H. & N. 225; 29 L. J., Ex. 210.

(*c*) *McGowan v. Smith*, 26 L. J., Ch. 8.

(*d*) *Ex parte South*, 3 Swaust. 392; *Rodick v. Gandell*, 1 D. M. & G. 780; *Diplock v. Hammond*, 2 Sm. & G. 141; 5 De G., M. & G. 320.

(*e*) *Row v. Dawson*, 1 Ves. sen. 331; *Letts v. Morris*, 4 Sim. 607; *Burn v. Carvalho*, 4 M. & C. 690.

(*f*) *Farquhar v. City of Toronto*, 12 Gr. 186.

favour of the payee (*g*). A mere cheque was held not to be an equitable assignment of a drawer's balance at his banker's (*g*). Now, by sect. 25, sub-sect. 6, of the Judicature Act, 1873, all debts or other legal choses in action are now assignable, provided the assignment be an absolute one (*h*) (and not by way of charge only), and be in writing under the hand of the assignor and notice thereof be given to the debtor. The assignee takes subject to all equities affecting the assignor (*i*). Assignments of equitable choses in action are not affected by this enactment, except that the assignee may now sue in any court, whereas before he could only sue in equity (*j*). Where the section has not been complied with the assignor cannot be joined as co-plaintiff without his consent, or without being communicated with, and properly indemnified (*k*). An order to pay a sum of money out of a debt is an absolute assignment (*l*), and must be stamped as an assignment and not as an order for payment (*m*); not so a cheque (*n*).

An order by a person depositing money at his bankers, that it shall be distributed, in named amounts, between certain persons, does not make the bankers liable to those persons, or any of them; they are only responsible, for the sum deposited, to the depositor; although they are aware of the destination of the money (*o*). Such an order remains revocable by the party giving it, until the occurrence of one of two events,—the payment over by the bankers to the persons for whom the sum was deposited; or the making of some binding engagement by the bankers with them, which gives the latter a right of action against the

(*g*) *Hopkinson v. Foster*, L. R., 19 Eq. 74.

(*h*) *National Provincial Bank v. Harle*, 6 Q. B. D. 626; *West of England Bank v. Batchelor*, W. N. 1882, p. 11.

(*i*) *Young v. Kitchin*, L. R., 3 Ex. D. 127; 47 L. J., Ex. 579.

(*j*) See Coote's on Mortgages, p. 478.

(*k*) *Turquand v. Fearon*, L. R., 4 Q. B. D. 280. See *In re Whitting*, 10 Ch. D. 615.

(*l*) *Brice v. Bannister*, L. R., 3 Q. B. D. 569; *Buck v. Robson*, ib. 686.

(*m*) *Buck v. Robson*, supra; *Fisher v. Calvert*, 27 W. R. 301.

(*n*) *Schræder v. Central Bank of London*, 34 L. T. 735; 24 W. R. 710.

(*o*) *Pinto v. Santos*, 5 Taunt. 447.

former (*p*). For instance, had the bankers stated to those persons, that they held the money for them, thus assenting to the order of their customer, that would have rendered them liable to the persons for whom they held the money, for their assent could not be retracted (*q*).

A letter by bankers, stating that a special credit for a certain sum has been opened by them at the instructions of their customer, in favour of any particular person who supplies goods on the faith of it, does not, of itself, constitute a specific appropriation or an equitable assignment of that sum in their hands, so as to make them liable to be sued in a Court of Equity as trustees for the person in whose favour the credit has been opened (*r*).

To receive  
dividends.

*Order to receive Dividends.*—By the Stamp Act, 1870, s. 103, a letter or power of attorney for the sale, transfer or acceptance of any of the government or parliamentary stocks or funds, duly stamped for that purpose is not to be charged with any further duty by reason of containing an authority for the receipt of the dividends on the same stocks or funds (*s*). And by sect. 104, a writing under hand only containing an order, request or direction from the owner or proprietor of any stock to any company or to any officer of any company, or to any banker, to pay the dividends or interest arising from any such stock to any person therein named, is not chargeable with duty as a letter or power of attorney. But although such order, request or direction is not liable to stamp duty as a letter or power of attorney, it requires to be stamped as an order

(*p*) *Gibson v. Minet*, 2 Bing. 7; *Williams v. Everett*, 14 East, 592; *Scott v. Porcher*, 3 Mer. 652; *Lilly v. Hays*, 5 A. & E. 548; *Brind v. Hampshire*, 1 M. & W. 372.

(*q*) *Frühling v. Schroeder*, 2 Bing. N. C. 77; *Walker v. Rostron*, 9 M. & W. 411, 421.

(*r*) *Morgan v. Larivière*, L. R., 7 H. L. 423; 44 L. J., Ch. 457.

(*s*) In the schedule, a letter or power of attorney or other instrument in the nature thereof is chargeable as follows:—

(3.) For the receipt of the dividends or interest of any stock,—

Where made for the receipt of one payment only, 1s.

In any other case, 5s.

for money payable on demand under sect. 48 (3). When bankers hold a power of attorney from the trustee of a married woman to receive and pay to her the dividends on government stock settled to her separate use, it will be no payment, if they pay the dividends to her creditors or nominees at her request (*t*).

*Banker as Stakeholder.*—In considering the position of the parties concerned where money has been paid into a bank to abide the issue of an event it is necessary to call attention to the Act 8 & 9 Vict. c. 109, s. 18. By that act it is enacted that all contracts or agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void; and no suit shall be brought or maintained, in any court of law or equity, for recovering any sum of money or valuable thing, alleged to have been won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made. And by sect. 18 it is provided that the preceding enactment shall not apply to a subscription or agreement to subscribe, or contribute for, or towards, any plate, prize or sum of money to be awarded to the winner of any lawful game. The effect of the words “no suit shall be brought or maintained,” &c., is to prohibit the recovery by the winner from the loser of money which has been won in such a transaction as that mentioned in that part of the section, or which has been deposited by such loser in the hands of a stakeholder to abide the event; and the statute does not apply to cases wherein the party seeks to recover his own stake upon a repudiation of the wagering contract; either party being able to recover the sum he himself has deposited, although he does not demand it till after the event (*u*).

(*t*) *Clerk v. Laurie*, 1 H. & N. 452.

(*u*) *Diggles v. Higgs*, L. R., 2 Ex. D. 422; 25 W. R. 777. See also *Hampden v. Walsh*, L. R., 1 Q. B. D. 189; 24 W. R. 607; *Thacker v. Hardy*, 4 Q. B. D. 685.

Banker acting  
as stake-  
holder.

To obtain  
acceptance.

*Order to obtain Acceptance.*—If a person delivers a bill of exchange to his bankers to get accepted for him (he being payee), and acceptance is refused, but they omit to communicate the circumstance to the depositor, he has a right of action against them, and may recover damages in proportion to the injury he can show he has sustained (*t*).

To accept  
drafts against  
bills of  
lading.

*Order to accept Drafts against Bills of Lading.*—A banker, receiving instructions from his customer to accept bills of exchange which a correspondent of his would draw against bills of lading, is not bound to ascertain the genuineness of the bills of lading before accepting or paying the bills of exchange; and if the banker pays the bills, although the bills of lading should afterwards turn out to be forgeries, he will be entitled to recover from his customer what he may have paid in respect of the bills of exchange (*u*).

To transfer to  
credit of  
another.

*Order to transfer or place to Credit of Another.*—We next investigate the effect of an order given by a customer to his bankers, directing them to transfer a sum of money from his account to the credit of another person, who also banks with them.

A., is debtor to B. A., with the consent of B., desires his bankers, who also are the bankers of B., to place to the credit of B., a sum of money (for goods sold), so as to make the transaction similar to a bill of exchange at one month, which the bankers consent to do, but only consider it as a payment to be made at a future day. Such a transaction does not amount to a payment; and where the bankers became bankrupt before the day on which the credit would expire, the Court held that A. was not discharged by such inchoate payment (*v*).

(*t*) *Van Hart v. Woolley*, 3 B. & C. 439.

(*u*) *Woods v. Thiedemann*, 1 H. & C. 478. *Ulster Bank v. Symmott*, 5 Ir. R., Eq. 595, is to the same effect.

(*v*) *Pedder v. Watts*, 2 Chit. 619.

So, where A. pays in money, to be placed to the credit of B., upon a condition; the money in the meantime to stand, in the bankers' books, in the name of A., it is at his risk, and the loss is his, if the bankers fail before the condition is complied with, though B. has written to desire it to be paid in generally (*y*).

But where A., in October, desired B. to pay his rent, then due to A., into A.'s bankers, and, by mistake, the money was not then paid, but B., having also an account at the same bank, ordered the amount to be transferred to the credit of A., which transfer was actually made on Thursday, the 8th December, and B. wrote the next day to A. mentioning this; but A., living at a distance, did not receive the information till Sunday, the 11th December, and the bankers failed on Saturday the 10th December; this was held to be a sufficient payment by B., although, at the time of the transfer, B.'s account was overdrawn by 900*l.*, and he had no general directions to pay his rent into the bank (*z*).

*Order to invest.*—Although there is nothing of a fiduciary character in the ordinary relations between banker and customer, who are, under such circumstances, simply debtor and creditor, the latter having the right to call for his money, or any part of it, immediately, yet, if the dealings between them go beyond this point in any way, and the banker is employed by the customer to make investments for him, or otherwise to manage his monetary transactions, then the banker is, in that respect, the agent of the customer, and is bound to observe complete good faith in the performance of the customer's orders.

So with respect to securities deposited with them, as exchequer bills, certificates of shares, coupons, bonds, debentures, either for safe custody, or with the intention that they should receive the interest or dividends, it is their

To invest money.

As to deposit of securities.

(*y*) *Calley v. Short*, Cooper Ch. R. 148.

(*z*) *Eyles v. Ellis*, 4 Bing. 112; 12 Moore, 306.

duty scrupulously to perform the orders of their customers touching the disposition of these deposits (*a*).

Persons depositing securities with bankers ought to reflect that although the rule is that where property belonging to a third party is received by a firm in the course of its business, and misapplied by one of the partners while in the custody of the firm, the firm is answerable (*b*), there are, nevertheless, some cases in which it is otherwise, and in which the firm is not responsible; as where one partner acting on his own separate account has been guilty of fraud:—Thus, a customer of a banking firm, whose practice it was to receive deposits, at their banking house, of boxes of securities belonging to their customers for safe custody, lent part of the securities contained in his box to the firm, upon their undertaking to replace them in three months, or sooner if required, and he afterwards lent another part of such securities to A., one of the partners in the firm, on his own separate account, other securities being, on both occasions, deposited by the respective borrowers, according to agreements, in pledge for those which were borrowed. After the expiration of three months from the time of the first loan, the firm, with the consent of the customer, deposited other securities in the box in exchange for those first pledged, and afterwards became bankrupt, when it appeared that the customer had been regularly credited, in the books of the firm, with interest on all the securities borrowed, but that A. had, without the knowledge either of his copartners or the customer, abstracted the securities pledged by himself upon the second loan, and had applied the proceeds to his own individual use:—the Court of Chancery held, that the firm was not responsible for the abstraction by A. of the securities pledged upon the second loan, although the key of

(*a*) See post, Chapter XX., DEPOSIT OF SECURITIES FOR SAFE CUSTODY.

(*b*) See Lind. on Part. 304; *Deenynges v. Noble*, *Clayton's case*, 1 Mer. 575; *Sadler v. Lee*, 6 Beav. 324; *Ex parte Biddulph*, 3 De G. & Sm. 587; *De Ribeyre v. Barclay*, 22 Beav. 107.

the box, as well as the box itself, was left in the custody of the firm, inasmuch as it did not appear that the firm had any authority to open the box or to examine its contents; and, consequently, that the customer had no right of proof, in respect of the second loan, against the joint estate, but only against the separate estate of A. (c).

The following case (which illustrates the principle that a partnership creditor has a right to receive payment of his debt out of the assets of a deceased partner, to the full amount of his claim against the original firm, even though such claim may arise from a fraud to which the deceased was no party (d),) may also be usefully cited here, to exemplify the duties which bankers owe to their clients, and the retribution which ensues on the violation of them, extending often to those who are in no way guilty of the crime or fraud in question.

Certain stock was transferred to a partner in a banking house, by way of security, for money borrowed of the firm by a customer. The debt was subsequently discharged, but, by consent, the stock was not re-transferred. The stock was afterwards fraudulently disposed of. Then one of the partners died, and, after his decease, the remaining partners became bankrupt. Lord Eldon held the creditor entitled to have the remaining stock transferred to him, to receive the residue of his debt, if possible, out of the estate of the bankrupt partners, and to go against the deceased partner's estate for the deficiency (e).

In such cases of misapplication of stock, the creditor may elect either to consider the proceeds of the stock as a debt due from the deceased partner's estate, or to have the stock specifically replaced (f).

(c) *Ex parte Eyre*, 1 Ph. 227. See also *Coomer v. Bromley*, 5 De G. & Sm. 532; *Sims v. Brutton*, 5 Ex. 802; *Bishop v. Countess of Jersey*, 2 Drew. 143.

(d) *Oldaker v. Lavender*, 5 Sim. 239.

(e) *Fulham v. Noble*, 3 Mer. 593.

(f) *Baring's case*, 1 Mer. 611.

*Orders as to Trust Funds.*—Bankers, generally speaking, are under no obligation to make inquiries as to the source from whence monies paid in by a customer are derived; or the purposes for which cheques are drawn by him (g).

In order to hold a banker justified in refusing to pay a cheque of his customer, the customer being a trustee, and drawing a cheque as trustee, there must be a misapplication of the money intended by the trustee, so as to constitute a breach of trust, and the banker must be cognisant of that intention. Where that is the case, and he nevertheless makes the payment, and a breach of trust follows, he will be liable to refund the money at suit of the *cestui que trust*. The existence of a personal benefit to a banker, designed or stipulated for, as a consequence of the payment, would be strong evidence that the banker was privy to the breach of trust. R., G. & Co., bankers, had acted as such to T. J., who carried on business with his son-in-law under the style of J. & M., but whose accounts with them were kept in his own name alone, and were unsettled at his death. He left a will bequeathing all his property to the use of his wife for life, and after her death to be divided among their children as she might think fit; part of the property consisted of life policies which were put into the hands of the bankers, together with the probate of T. J.'s will, and they received the amount of the policies, made up their accounts, and, after deducting their own unsettled claims, declared a certain sum to remain due from themselves to the executrix. She continued her husband's business with his late partner under the style of J. & M., and a new account was opened with the bankers in the name of the new firm, and she, as executrix, drew a cheque for the amount stated to be due to her, and paid it in to the bankers to be credited to the firm of J. & M., and it was so credited and paid out, with other money, on account

(g) *Ex parte Kingston, In re Gross*, L. R., 6 Ch. App. 632; *Bodenham v. Hoskins*, 2 De G., Mac. & G. 903.

of cheques drawn by the new firm:—Held that these circumstances were not, in themselves, sufficient to show that a breach of trust had been committed, and that the bankers knew of the intention to commit it, so as to render them liable (in a suit by the children of the testator) to replace the money (*h*).

*Following Trust Monies in Banker's Hands.*—If money held by a trustee (*i*) or other person in a fiduciary character (*k*) has been paid by him to his account at his bankers the person for whom he held the money can follow it, and has a charge on the money in the banker's hands.

*Application of Clayton's Case.*—If a person holding money as a trustee or in a fiduciary character pays it into his own account, and mixes it with his own money, and afterwards draws out cheques in the ordinary way the rule in *Clayton's case*, attributing the first drawings out to the first payments in, does not apply, and the drawer is taken to have drawn out his own money in preference to the trust money (*l*). As between two *cestuis que trusts* whose money the trustee has paid into his own account at his bankers the rule in *Clayton's case*, however, does apply (*m*).

*Illegal Orders of Customer.*—A banker, who permits a sum of money to be paid into his bank, for the purpose of being paid over, for corruptly procuring an appointment under Government, may be indicted for a conspiracy, along with those who are to procure the appointment and to receive the money (*n*). Illegal orders.

(*h*) *Gray v. Johnston*, L. R., 3 H. L. 1. See also *Bridgman v. Gill*, 24 Beav. 304; *Wilson v. Moore*, 1 My. & K. 337; *Child v. Thorley*, 16 Ch. D. 151.

(*i*) *Hallett's Estate, In re*, 13 Ch. D. 696; 49 L. J., Ch. 415. See, particularly, judgment of the Master of the Rolls, in which all the cases on the subject are reviewed.

(*k*) *Ibid.*, overruling *Ex parte Dale and Company*, 11 Ch. D. 772.

(*l*) *Re Hallett's Estate*, *supra*, per Court of Appeal, Thesiger, L. J., dissenting. *Pennell v. Deffel* on this point not followed.

(*m*) *Ibid.*, per Fry, J.

(*n*) *Rex v. Pollman*, 2 Camp. 233.

The same principle would seem to apply to money deposited with a banker as stakeholder, as it were, to be paid over, after an election, for the purposes of bribery.

So, wherever bankers receive money, and agree to hold it, to be paid over for any purpose forbidden by the law, it seems they would be alike liable, for, in such case, an individual stakeholder would be liable, if fixed with a knowledge of the illegal purpose, and bankers are in the same situation as other individuals.

## CHAPTER XVII.

## ACCOUNTABLE OR DEPOSIT RECEIPTS.

THE subject of accountable receipts, given by bankers, is one of some importance, but one of which the development, by means of judicial decision, does not appear to be in proportion to what one might desire; in other words, but few questions on, or relating to, the subject have been presented to the Courts for decision. Accountable receipts.

Where a person deposits money with bankers, without intending that it should be called for from time to time by cheques, it is a frequent practice for them to contract to pay interest on the money thus lent to them, and to give an accountable receipt,—that is, a memorandum of the receipt of the principal, an acknowledgment that they are accountable for it on demand and a promise to pay interest upon it during the time it remains in their hands (*a*); but the latter clause is not always, or necessarily, a part of the instrument.

The reader will remember that bankers are not liable to pay interest on money deposited with them, in the absence of an agreement to do so (*b*).

An acknowledgment in this form—

“Mr. T. has left in my hands 200*l*.

“J. A.”

does not require a stamp to make it evidence (*c*). By the Stamp Act, 1870, Sched., tit. “Receipt,” a receipt given for money deposited in any bank, or with any banker, to

(*a*) *Way v. Bassett*, 5 Hare, 56. Sometimes it is stated expressly not to bear interest, as in *Stapleton v. Stapleton*, 14 Sim. 186, 187.

(*b*) *Edwards v. Vere*, 5 B. & Ad. 282.

(*c*) *Tomkins v. Ashby*, 6 B. & C. 541; *Cory v. Davis*, 14 C. B., N. S. 370.

be accounted for, and expressed to be received of the person to whom the same is to be accounted for, is exempt from stamp duty. But receipts or acknowledgments given by bankers for sums paid to, or deposited with, them, for or upon letters of allotment of shares, or in respect of calls upon script or shares, of or in any company, are not exempt. If the sums so paid amount to 2*l.* or upwards, the bankers must give a penny stamped receipt upon each payment (*d*).

A., to whom the Sheffield and Rotherham Bank was indebted, took accountable receipts for the sums due from the bank. The course of dealing was, that as long as the sums, for which these receipts were given, remained in the bankers' hands, the receipts were returned to the bank once a year to be cancelled, when the interest, for the past year, was either paid or allowed in account, and fresh receipts, in place of the cancelled ones, were given. A. died, and, pending a contest for the administration of his estate, these accountable receipts came into the hands of a stranger, who, by a fraud, obtained payment of the sums due upon them; the receipts were returned; and they were afterwards cancelled by tearing off the signature at the foot.

The administrator of A. was held, there being nothing to show that the receipts were transferable so as to entitle the holder to demand payment of the sums represented by them, to be in a position to maintain a suit in equity against the bank for payment of those sums (*e*).

Here, it is to be observed, the mode in which payment was obtained was this:—The receipts were presented at the Worksop Branch of the Nottinghamshire Bank, with an indorsement purporting to be that of A., and, it being unknown to the manager of that branch that A. was dead, the money was paid and the receipts given up; their amount was, in the course of business, charged by the

(*d*) Stamp Act, 1870, s. 120.

(*e*) *Pearce v. Creswick*, 2 Hare, 286.

Nottinghamshire Bank to their London bankers, to whom the receipts were remitted; shortly afterwards, the Sheffield and Rotherham Bank directed the same London bankers to give credit to the Nottinghamshire Bank for the amount, and the receipts were delivered up to the Sheffield and Rotherham Bank (*f*).

*Banker liable on original Deposit.*—Certain persons carried on business as bankers at Brechin; they were also the general agents for the Bank of Scotland at that place. A person deposited with them a sum of money, intending to deposit it on his own account with the Bank of Scotland. He received an acknowledgment headed, "Bank Office, Brechin," and signed by the names of the persons who were both private bankers and general agents for the Bank of Scotland; the House of Lords held, that he could not, on this note, recover the deposit from the Bank of Scotland (*g*).

Banker liable  
on original  
deposit.

*On Change of Firm.*—A person depositing money at bankers, and taking their accountable receipt, does not, by continuing to leave his money in the bank, after a dissolution of the original firm, and the constitution of a new one, consisting of some of the old members and of other persons, discharge the former partners who had retired, although he receives interest regularly from the new firm, and gives no notice, and continues to transact business with them in the common course, and that for a period of four years, until they became insolvent. Such facts are not sufficient to enable a jury to come to the conclusion that he did discharge the outgoing members of the firm (*h*), and assent to

On change of  
firm.

(*f*) *Pearce v. Creswick*, 2 Hare, 286.

(*g*) *Bank of Scotland v. Watson*, 1 Dow, 40.

(*h*) *Gough v. Davies*, 4 Price, 200; *Daniel v. Cross*, 3 Ves. 277; *Bilborough v. Holmes*, L. R., 6 Ch. D. 255. See, as to evidence to show knowledge of retirement from banking firm and intention to credit new firm, *Hart v. Alexander*, 2 M. & W. 484. It might, in some cases, be found in practice more desirable for the customer to transfer the credit

transfer the credit to the new firm, though he had made fresh deposits with them and received fresh accountable receipts from them (*i*). Of course, the outgoing partners, provided proper notice of their retirement has been given, are not liable to the customer beyond the amount due to him at the time of their retirement; on the other hand, the incoming partners are not liable for debts incurred previously to their joining the firm (*k*).

On bank-  
ruptcy of  
firm.

*On Bankruptcy of Firm.*—A. deposited moneys with B., C. and D., who were partners in banking, carrying on business under that firm, and received from them promissory notes, in which they promised to pay him the amounts, three months after sight respectively, with interest. In September, 1831, A. died. In March, 1837, B. died, having appointed C. and X. his executors. C. and D. continued the banking business, in the same firm as before, till 1842, and interest on the promissory notes was regularly paid by the firm until that time. In May, 1842, the customers of the bank were invited to transfer their accounts to the Isle of Wight Joint-Stock Banking Company. In December, 1843, C. and D. became bankrupt. In the same month, the executors of A. filed a bill in equity, against the executors of B. and the devisees under his will, for payment of the amounts of the promissory notes out of the personalty or real estate of B. The acts of the surviving partners of B. were held not to have the effect of taking the debt upon the notes out of the operation of the Statute of Limitations, as against the real or personal estate of the deceased partner; for that acts done by one of the surviving partners, who was executor of the deceased partner,—which acts the surviving partners, as such, were bound to do,—could not *prima facie* be

to the new firm, as regards the question of enforcing the responsibility. *Lyth v. Ault*, 7 Exch. 669; 21 L. J., Exch. 217.

(*i*) See note (*h*), ante, p. 127. As to what is necessary to constitute proper notice of retirement, see post.

(*k*) *Crauford v. Cocks*, 6 Exch. 290.

considered to have been done in the character of executor (1).

*Double Liability.*—Deposit receipts may be given in such a way as to create a double liability, as under the following circumstances:—

Double  
liability.

John O'Brien, father of Daniel O'Brien and Catherine Callaghan, lodged 150*l.* in a bank upon a deposit receipt in his own name. Upon Daniel's producing the receipt some time afterwards, and demanding the interest, he was refused, the bank paying only to the depositor in person; John, upon this, used for some time to accompany Daniel, and receive the interest, taking the fresh receipt in his (John's) name, on each occasion. Afterwards he obtained permission that Daniel should receive payments upon producing the receipt indorsed by John. Then Daniel, by his directions, paid an additional sum of 5*l.* into the bank, and obtained a new deposit receipt for the whole amount, 155*l.*, then in the hands of the bank, but in the name of Catherine O'Brien (afterwards Callaghan), Daniel telling the manager that his father intended 155*l.* to be the portion of his daughter Catherine, but desired to retain a control over it during his life, and that he wished the deposit receipt should be drawn in her name. A few days afterwards John O'Brien died; Daniel took out administration, *testamento annexo*, and, as administrator, claimed the 155*l.* Shortly after, Catherine married, and she and her husband demanded payment of this money. Both Daniel and Catherine, with her husband, commenced actions against the bankers. They filed a bill of interpleader against both; which was, however, dismissed, on the ground that this was not the case of a double demand for one duty, but a case in which there might be two liabilities; and that a mere pretext of conflicting claims could not support a bill of interpleader, the Court being bound to see that there is a question to be tried. Here

(1) *Way v. Bassett*, 5 Hare, 55.

the transaction created a debt from the bank to Catherine, in consequence of the mode of dealing adopted by the bankers; they were not at liberty to resist her demand, or to treat the case as one of interpleader, because John's representative, who made the last deposit, and took the new receipt, chose to rescind the whole transaction. It is quite consistent with this view, that John's representative might still be able to recover against the bankers; for it was their own fault, if they created a new liability in themselves, without obtaining a sufficient discharge from the original title to the money in their hands. It was pointed out by the Court, that by their application they asked it to destroy their own mode of dealing; for, if the cancellation of the old receipt, and the issuing of the new receipt, did not create a liability to the person named in the new receipt, the bankers' system of deposit receipts was defective (*m*).

A deposit note for money has been held to be like a deposit for goods, and to pass by delivery of the instrument, and to require no assignment (*n*). It is submitted, however, that this is only so where the money is locked up in a box, and is capable of being returned in specie; where it is not so the customer really loses his actual money, and receives in return a right of action to recover a similar amount, which is a mere chose in action, and only assignable as such (*o*).

A certificate of the deposit of money in a bank has been held in America to be a negotiable instrument (*p*).

A deposit note may be the subject-matter of a good *donatio mortis causâ* (*q*).

The Statute of Limitations applies to deposit notes (*r*).

(*m*) *Cochrane v. O'Brien*, 2 J. & L. 388.

(*n*) *Woodhams v. Anglo-Australian and Universal Life Assurance Company*, 3 Giff. 238; 8 Jur., N. S. 148.

(*o*) See *Sibree v. Tripp*, 15 M. & W. 37; Cavanagh on Money Securities, p. 40. See also *Moore v. Ulster Banking Company*, 11 Ir. R., C. L. 512.

(*p*) *Miller v. Austen*, 13 Howard, U. S. Rep. 218.

(*q*) *Hewitt v. Kaye*, L. R., 6 Eq. 198. See also *In re Mead*, 15 Ch. D. 651.

(*r*) *Poll v. Clegg*, 16 M. & W. 311.

*Forging.*—Altering the sum, for which an accountable receipt is given, is an altering in a material part, and indictable as a forgery (*s*).

By 24 & 25 Vict. c. 98, s. 23, it is felony to forge an accountable receipt, whether for money or for goods, or for any note, bill, or other security for the payment of money, or any indorsement on, or assignment of, any such accountable receipt; and so is the altering, or offering, uttering, disposing of, or putting off, knowing the same to be forged or altered, any such accountable receipt, with intent to defraud. The punishment for these offences is either penal servitude for life, or for a term of five years (27 & 28 Vict. c. 47), or imprisonment for a period not exceeding two years, with or without hard labour, and with or without solitary confinement.

Where it was the practice of a bank to treat a receipt, with the depositor's name thereon, as an order for the payment of the money deposited and interest upon the receipt being presented to the bank; and a person took the receipt to the bank, and, having written the depositor's name thereon, delivered it to the bankers, who paid him the principal and interest due thereon: it was held, that he was properly convicted, as for a forgery of an order for the payment of money (*t*).

A person producing a forged receipt, purporting to be a receipt for poor rates due from A., for the purpose of inducing the prosecutor to send money to A. as a responsible person, is within the above statute, for it is not necessary that money should be obtained directly upon it, or by the utterer at all (*u*).

A writing, purporting to authorize the bearer to receive money deposited in a bank by a friendly society on accountable receipts, and purporting to be signed by the principal officers of the society, may be alleged, in an

(*s*) *Reg. v. Johnston*, 5 Cox, C. C. 133.

(*t*) *Reg. v. Atkinson*, Car. & M. 325.

(*u*) *Reg. v. Ion*, 2 Den. C. C. 475; 21 L. J., M. C. 166.

indictment for forgery, to be a warrant for the payment of money (*x*).

Obtaining by  
false pre-  
tences.

*Obtaining by False Pretences.*—By 24 & 25 Vict. c. 96, s. 89, it is indictable to procure, by any false pretence, an accountable receipt to be delivered to another person for the use or benefit of the person making the false pretence (*y*).

(*x*) *Reg. v. Roberts*, 2 Mood. C. C. 258.

(*y*) See *Reg. v. Garrett*, 23 L. J., M. C. 20.

## CHAPTER XVIII.

## THE RELATION OF BANKER AND CORRESPONDENT.

It frequently happens in questions of banking law that the incidence of a loss has to be determined as between two parties, who are both equally innocent of fraud, or crime, in the transaction. More especially is this the case in questions arising on dealings of a customer with his bankers, who are obliged, in order to complete the intended transaction, to employ the agency of their correspondents—other banking houses carrying on business at a distance.

Thus, if a customer employs his bankers to perform some duty for him, which can only be brought to a conclusion in some place at a distance, whether in this country or in foreign parts, so that it becomes necessary for them to employ the agency of persons acting there, and a loss ensues from the conduct of such agents, whether direct or intermediate, and the question arises whether the customer or the bankers are to bear that loss, in all such cases it is the bankers who must suffer; for, of the two, they are the parties whose conduct has led to the loss; it was they who chose the agents, or who chose the correspondents who selected the actual agents; it is their act, therefore, which has led to the occurrences which have caused the loss, and for that loss, as between themselves and the customer, they must be liable; in other words, the customer has a right of action against them, and will, in a Court of law, be compensated for the injury he has sustained. The bankers, however, will have a right of recourse against their correspondents, by whose laches or default, either

primarily or through the default of any one whom the latter may have entrusted with the business, the bankers have incurred the loss.

The following case well illustrates this position :—

A customer of a bank sent orders to his bankers to obtain for him payment of a bill of exchange, drawn by him on a person in Calcutta; the bankers accepted the employment, and wrote to him word that they had done so, promising to credit him with the amount of the bill when received. In the usual course they transmitted the bill to their correspondents in London, by whom it was forwarded to the house of A., in Calcutta, to get payment; it was paid into A.'s, immediately after which they failed. The customer having been advised, by his bankers, that the bill was paid, they were held to be his agents to obtain payment, and it was also decided that, *ipso facto*, upon payment being made, they became liable to him for the amount received; and that any loss which might arise from the conduct of the bankers' sub-agents, between whom and himself no privity was established, must fall on the bankers (*a*). And the case was said not to be distinguishable from the case of a customer of a bank in London sending them a bill or a cheque, with orders to get payment, and their clearing-house clerk, instead of returning with the balance, absconds; in which case the bankers would clearly be liable to the customer for the amount of the bill (*b*).

Also, the state of the accounts, between the customer's bankers and any of the correspondents they may employ in the transaction, can make no difference.

Hence, in all cases where a customer desires his bankers to obtain payment of a bill for him, and they do not refuse, or if a stranger makes the same request, and they agree to perform it, they are liable for the amount of the bill,

(*a*) *Mackenzie v. Ramsay*, 9 C. & F. 818.

(*b*) *Per Lord Lyndhurst, C., id.* 848.

whether, after remitting it to their correspondents, to get the payment, its amount is returned to them or not, provided, in the latter case, the cause is the default of their correspondents.

Some country bankers pay the London banker, who acts as their agent and correspondent, a fixed annual sum for conducting their agency business. Others allow a commission on the amount of the transactions during the year. There are many country bankers who pay no commission, but leave a sum of money in the hands of their London agents, in the nature of a deposit, against which they are not permitted to draw. In such cases this sum is altogether withdrawn from the general account of the country banker, and placed to another, called the deposit account.

A question arising upon a remittance through a bank may be mentioned here, as one of great practical importance; viz., if a customer of a country bank, who already has a balance in his favour on his account with them, pays in a further sum of 707*l.*, with directions in writing that 500*l.* of it was to be paid into Messrs. Robarts' bank in London to meet a bill of exchange accepted by him, and the 707*l.* is carried by the country bank to his general account with them, and the 500*l.* is paid into Robarts', but, before the bill becomes due, the country bank stops payment; whether such 500*l.* is available for the general creditors of the country bank or *is so specifically appropriated to be applied in a particular way* as to remain the property of the customer at the time of the closing of the country bank; and, under the above circumstances, the latter has been held to be the case (c).

But, on the other hand, where there is no specific appropriation it is otherwise: so where M. paid a sum of money into a country bankers', with written directions to apply it to meet a bill payable the next day at their London agents,

(c) *Farley v. Turner*, 26 L. J., Chanc. 710. See also *Barkworth v. Ellerman*, 6 H. & N. 605.

and the country bankers stopped payment the next day without having advised their London agents of the payment, and the bill, on being presented, was dishonoured, as the country bankers *had made no specific appropriation of the sum*, he was only entitled to prove as a general creditor on their estate (*d*).

*Privity.*—As between a banker and the customer of his correspondent there is no privity; consequently where one sent to a banker from his correspondent, the former takes them subject to the instructions of the correspondent and not of the correspondent's customer; so where a customer of a country bankers paid in to the bankers a sum of money in bank notes and also some bills of exchange to be remitted to London in order to meet certain acceptances, and the bankers sent to their London agents the bills and some bank notes, with a letter directing them to pay a certain sum of money, also giving them notice of the acceptances as payable at their bank, and giving directions as to other business, and the country bankers stopped payment, owing a large balance to the London bankers: it was held that, as between the country customers and the London bankers there was no appropriation of the bills and notes to meet the acceptances, and that the London bankers could retain the bills and notes without meeting the acceptances (*e*).

Where an acceptor of a bill paid money to his bankers (at whose correspondents' house it was payable), for the purpose of taking it and other bills up, and they promised him to apply it to such purposes, and also entered the particular bill to their credit in their books, but they had

(*d*) *In re Burned's Banking Company, Ex parte Massey*, 39 L. J., Chanc. 635. See also *Thompson v. Simpson*, L. R., 5 Ch. App. 659; *Citizens Bank of Louisiana v. Bank of New Orleans*, L. R., 6 H. L. Cas. 352; *Ex parte Waring*, 36 L. J., Chanc. 151; 19 Ves. 349; *Ex parte Smart*, L. R., 8 Ch. 220; 42 L. J., Bank. 22; *Ex parte Dewhurst*, L. R., 8 Ch. 965; 42 L. J., Bank. 47.

(*e*) *Johnson v. Robarts*, L. R., 10 Ch. App. 505; 44 L. J., Ch. 678; 23 W. R. 763.

not advised their correspondents to pay it: the Court held, that the drawer of the bill, who was also the holder of the bill, could not sue the bankers for the amount of the bill, as there was no privity between the drawer and the bankers to sustain the action (*f*).

The object of the transmission of a bill for presentation for acceptance and payment by a principal to his agent being to obtain the acceptance and the payment of the bill, or, if it is not accepted, to guard the rights of the principal against the drawer, in case recourse is to be had to the drawer, the duty of the agent must be measured by these considerations, and the duty of the agent is to obtain acceptance of the bill, if possible, but not to press unduly for acceptance, provided he obtains acceptance or a refusal within the time, which will preserve the rights of the principal against the drawer (*g*).

We may conclude by mentioning the following decision, which is one of practical utility:—A bill of exchange was sent by a bank in the United States to a bank in Toronto, Canada, for collection and remittance, accompanying which was a bill of lading for 10,000 bushels of wheat, which, on the bill of exchange being accepted by the drawees, was delivered over to them, they being the consignees named in the bill of lading: it was held, that it was not the duty of the bank in Canada, as the agent of the American bank, in the absence of special instructions, to retain the bill of lading until the bill of exchange was paid (*h*).

(*f*) *Moore v. Bushell*, 27 L. J., Ex. 3.

(*g*) *Bank of Van Diemen's Land v. Bank of Victoria*, L. R., 3 P. C. 526; 40 L. J., P. C. 28.

(*h*) *Wisconsin Marine Company Bank v. Bank of British North America*, 10 Upper Canada, Law Journal, 151; it is the decision of the highest Court of Appeal in that colony.

## CHAPTER XIX.

## DEPOSIT OF SECURITIES FOR SPECIAL PURPOSES.

WE will next trace the rules of law which regulate the obligations and rights of bankers, with respect to bills of exchange and other securities deposited with them by their customers and others. Questions of this nature commonly arise between the customer, or other depositor, on the one hand, and the trustee of the bankers, upon their bankruptcy, on the other. The deposit of securities for safe custody will be considered in the next chapter.

Bills of ex-  
change.

*Special Purposes.*—The primary or general rule is, that when a banker is employed as an agent, with whom undue bills are deposited by the customer, in order that the banker may receive the proceeds, when the bills become due, or for any other specific purpose (*a*), and the banker becomes bankrupt, having the bills entrusted to him remaining in specie in his hands, they continue the property of the customer, and do not pass to the trustee, and he may reclaim them in specie from the trustee.

But, on the other hand, if bills of exchange are remitted to the banker on the general account between him and the customer, and are not distinguished from the cash items of the account, they cannot be reclaimed by the customer from the trustee. In other words, if the relation of the customer and the banker was that of principal and agent with respect to the bills at the time of the latter's bankruptcy, the customer may recover in trover from the trustee; if the relation had passed into that of debtor and creditor at the time of the bankruptcy, then the customer

(*a*) *Belcher v. Campbell*, 8 Q. B. 11.

has no such right of action against the trustee (*b*), although the customer might, of course, have sued the banker for the amount of the bills, as soon as they were entered *as cash* to the customer's credit, and the books of the banker would have been evidence against him on this point.

This general rule, that bills deposited or remitted for the purpose of the banker's receiving the proceeds when due continue the property of the customer, if, at the time of the bankruptcy, they remain in specie in the hands of the banker, will be applied in all cases where there is no bargain between the customer and the banker, that, as soon as the bills reached the banker, the property in them should be changed; and such bargain cannot be inferred from circumstances which fail to show any consideration for the customer's assent, as it would be unreasonable in the banker to ask, and imprudent in the customer to accede to, such terms, in the absence of a consideration.

In one case (which has been fully confirmed) the course of dealing between the customer and the bank, and the usage of the banking trade throughout the county (of Lancaster), was shown to be in accordance with the following facts:—

The account was kept in this form in the pass-book or banking book.

A. B. (the customer), in account with C. D. (the banker).

Dr.				Cr.			
1821.	£	s.	d.	1821.	£	s.	d.
July 4.—To Bank.....	80	0	0	July 1.—By Balance..	1,300	0	0
„ 5.—To Draft ....	100	0	0	„ 2.—By Bills ....	750	0	0

At the end of every half-year an account was sent in to the customer from the banker. In the account of Christ-

(*b*) *Ex parte Oursell*, Ambler, 237; *Ex parte Sarjeant*, 1 Rose, 153, which are applications of the above rule of law to the several facts of those cases. The general rule is established by *Scott v. Surman*, Willes, 400; *Bolton v. Puller*, 1 B. & P. 539; *Thompson v. Giles*, 2 B. & C. 422; confirmed in *Ex parte Atkins*, 3 M., D. & De G. 103; and in *Ex parte Barkworth*, *In re Harrison*, 2 De G. & J. 194; 27 L. J., Bank. 5.

mas, 1821, and also in the pass-book, a bill for 689*l.* 19*s.* was included, being one of several bills paid in on the 10th of December, 1821, and it formed part of the cash balance of 911*l.* 2*s.* 5*d.* therein stated to be due to the customer. When the customers paid bills into the bank the usage was, that (provided the banker approved of the bills) they were never written short (c), but entered *on the day they were paid in*, both in the pass-book and in the books of the bank, to the credit of the customer, in the form above stated; and after such entry, the customer was at liberty to draw to the full amount appearing to his credit, by cheques on the bank. Bills disapproved of were not so entered, but were sometimes returned, sometimes deposited till due. *All bills so entered, whether made specially payable to the customer or not, were indorsed by him*, or if, for any private reasons, he did not wish his name to appear on the bills, a letter was given to the bank, acknowledging himself to be equally liable as if he had indorsed. An interest account was kept not in the pass-book, but in the books of the bank, in which the customer was debited with interest, on each cash payment to him, from the date of the payment; and on each payment in bills, from the period when the bills were due and paid; and, on the other hand, he had credit for interest from the date of each cash payment by him, and from the period when each bill paid in by him became due and was paid. As the accounts were balanced half-yearly, if a bill was paid in which did not become due before the end of the half-year, the customer was debited with the interest up to the time when the bill was due. The balance only of the interest was entered in the pass-book, and this was the usual mode of keeping an interest account. If only the undue bills paid in by the customer were taken out of his account, in this case, as made up to the 31st of December, 1821, the customer's account would, at that date, appear

(c) For definition of "short" bills, see *post*, p. 145.

to be overdrawn ; but some of the payments by the banker to the customer were made in bills payable at future times, and some of them were also undue on 31st of December, 1821, and if all the undue bills on both sides had been taken out of the account, the customer would have been creditor on that account.

At the period of the bankruptcy, the cash balance was in favour of the customer, exclusive of the bills in question. It was proved to be the constant usage and course of dealing of this bank and of others in the county of Lancaster, to use bills so paid in, by paying them away to their customers as they thought fit.

No direct proof was given that the customer was acquainted with this practice, and the customer never received anything from the banker but cash, notes and bills, drawn by the banker upon his London agents (*d*).

On these facts and the usage above stated it was contended, that a bargain or a contract between the customer and banker was to be inferred, to the effect that bills so deposited by the former were to become the property of the banker, upon reaching his hands. But the Court considered that, though it appeared to be the practice to carry the amount of the bills to the cash column of the account, the bills were entered, not as cash, but as bills (*e*) ; and that, although the amount was so carried to the cash column, it did not follow that the customer assented to their being considered as cash. That merely amounted to an undertaking on the part of the bank to answer cheques in advance, to the amount of the bills so entered. By indorsing the bills paid in, or by giving a guarantie when he did not choose to indorse, the customer might enable the

(*d*) *Thompson v. Giles*, 2 B. & C. 422. The usage of bankers was again stated to prevail in Lancashire to the above effect in *Ex parte Armistead*, *In re Dilworth & Co.*, 2 Glyn & J. 379.

(*e*) *Ibid.* at pp. 431, 432. Even if they had been entered as cash, that would have admitted of explanation ; *Giles v. Perkins*, 9 East, 12 ; and the customer, even in that case, might be shown to be entitled to the bills. *Ex parte Sarjeant*, 1 Rose, 153, and *per Bayley, J.*, 2 B. & C. 430.

banker to negotiate the bills, and, in such case, a *bonâ fide* holder might have a right to retain them. But the banker could only be justified in negotiating them, when that was rendered a reasonable course, by the state of the customer's account. The custom or usage of bankers in Lancashire was stated to be, it will be observed, to use bills paid in by their customers; but it was not stated to be the usage that the bankers should so use the bills as their own, *without reference to the condition of the customer's account*.

On the whole of the case it was concluded, that there was no foundation for supposing a bargain to have been made, enabling the banker to use, as his own, bills deposited with him; and the customer recovered the bills from the assignees.

The decision, it will be observed, is in accordance with the general position that if a customer puts bills into his banker's hands, although that gives him a right to expect that his cheques will be honoured to the amount of the bills paid in, still they remain *his* property, subject to any lien the banker may have on them, to the extent of his advances (*f*).

This decision received judicial recognition in a comparatively recent case in bankruptcy, as being in entire conformity with reason, good sense, and common honesty (*g*). There undue bills of exchange were from time to time remitted to his bankers by a customer and indorsed to the bankers. The course of dealing was, that the bills were not entered short, but though the bills were distinguished in the customer's account as bills, the full amounts were entered in the cash column under the dates on which the bills were paid into the bank, and the customer was at all times at liberty to draw cheques to the extent of the balance in his favour, as appearing on the account thus made out. Interest was allowed by the bankers upon the bills only

(*f*) *Thompson v. Giles*, *supra*, per Holroyd, J., at pp. 431, 433.

(*g*) *Ex parte Barkworth, In re Harrison*, 27 L. J., Bank. 5; 2 De G. & J. 194.

from the time when their amounts were received; and it was held, in the absence of evidence of the customer's acquiescing in or authorizing the bankers to treat the bills as their own from the times of their being paid in, that the bills remained the property of the customer, subject, however, to the lien of the bankers for their cash balance, and that the bankers had no right to negotiate them, unless the balance of the customer's account was in their favour; and that on the bankruptcy of the bankers, such of these bills as remained in their hands in specie did not pass to their assignees, but, subject to the lien above mentioned, belonged to the customer. "The facts," said Knight Bruce, L. J., in delivering his judgment, "are not numerous. A firm of bankers has become bankrupt, and at the time of their bankruptcy they had in their possession short bills deposited with, or otherwise furnished to, them by one of their customers. The customer then said to the bankrupts: 'I am ready to pay you the balance against me on my account, upon its being ascertained, and I will relieve you from all liability in respect of your transactions with me or with my firm; but return to us the short bills belonging to us which you hold.' To this the bankrupts, or rather their assignees, replied, 'No; the bills now belong to us, and we have a right to retain them as part of the assets, and you must come in as a creditor for the amount.' To me," said the learned judge, "it appears that this proposition is as startling as a demand by a bankrupt to retain the plate or the title deeds which a customer has deposited with him for safe custody" (*h*).

Bills under such circumstances are not in the order and disposition of the banker, within the Bankruptcy Laws; for a banker, in his relation to his customer, is a factor for bills, within the meaning of the exception of factor in

those laws (*i*) ; and it is well known that bankers receive bills as factors, or agents, to get payment of them when due.

*Entering Bills as Cash.*—The entry as cash in the banker's books of such bills would not, of itself, change the property (*k*) ; for a banker's books cannot be evidence for him, though they may be against him ; and the assent of the customer to the bills being considered as cash, must be proved in such case ; the *onus* of proving it being on the banker (*l*) ; also, it is hard to suppose that, by entering the full amount in the cash column of the account, the banker intended to debit himself presently with the whole sum to be received in future on the bills. In order to change the property, it must be shown that the banker bought the bills, or what is in general the same thing, discounted them ; then the customer might have immediately sued the banker for the price which the banker had agreed to give for the bills, but still retained in his hands ; and if the customer did not indorse the bills, and they were afterwards dishonoured, the banker would have no remedy against him (*m*).

In the pass-book in the case before mentioned (*n*), it will be observed, the bills were entered at the full amount, which does not tend to show that they were discounted ; nor do the entries in the interest account tend that way. If it had been intended that the bills should become the property of the banker, they would have been entered as cash, deducting the discount.

*Bills not due.* *Property in Bills not due.*—It will be observed to follow as a consequence of the rule above stated, that when

(*i*) 2 B. & C. 431, 433 ; *per* Lord Eldon, C., 1 Rose, 239, 253 ; *Bryson v. Wylie*, *per* Buller, J., 1 B. & P. 82, n.

(*k*) *Giles v. Perkins*, 9 East, 12 ; *Hughes v. Spooner*, cited in 2 B. & C. 425, and confirmed, *per* Holroyd, J., *id.* 431.

(*l*) *Ex parte Sarjeant*, 1 Rose, 153.

(*m*) *Per* Holroyd, J., 2 B. & C. 431, 433.

(*n*) *Thompson v. Giles*, *ante*, pp. 139 *et seq.*

the property in bills not due, paid into a banker's, remains in the customer, if by any accident they are destroyed without the default of the banker, the loss does not fall upon him, but upon the customer (*n*).

The rule itself prevails equally where the bills are deposited for any other specific purpose, as well as that of receiving the amount when due (*o*).

As has been stated, however, bills *may be paid in* under circumstances furnishing evidence of a transfer of the property in them from the customer to the banker; that is a question of fact, to be determined by a jury upon the whole of the circumstances in evidence (*u*).

*Short Bills.*—The terms “short bills,” and “entering bills short,” are very frequently met with in cases relating to the law of bankers, being technical expressions, used amongst persons engaged in banking: it is desirable, therefore, before proceeding further, to state the meaning that is attached to the words. Short bills.

When, upon the receipt from a customer of an undue bill the banker does not carry the amount directly to the former's credit, as for a payment of so much cash into his account, but notes down the receipt of the bill in the customer's account, with its amount, and the time when due, in a previous column of the same page, he (the banker) is said to “enter those bills short” (*p*). And the bills, when so entered, are commonly said to be “short bills” (*q*). Though, whether they will be considered so by the Courts, does not depend upon the particular mode in which they are entered, but upon the dealings between the parties, and the circumstances. Such bills, in the absence of special agreement between the parties to the contrary, or

(*n*) *Per Best, J.*, 2 B. & C. 433. A similar opinion was given by the Judicial Committee of the Privy Council, in *Young v. Bank of Bengal*, 1 Deac. 681.

(*o*) *Belcher v. Campbell*, 8 Q. B. 11.

(*p*) *Giles v. Perkins*, 9 East, 12.

(*q*) *Ex parte Pease*, 1 Rose, 232, *per* Lord Eldon, C.

modes of dealing from which such agreement may be inferred, are considered in the nature of a deposit; the property in them is not changed; on the bankruptcy of the banker, with them in his hands, they may be recovered. Crediting the customer with their amount as cash, is not sufficient to change the property (*r*).

In other cases, it has appeared to be the usage of some country banking houses to enter undue bills that are deposited to the credit of the customer, giving him either cash for them, or liberty to draw for the amount upon the bank, the customer always indorsing the bills. The practice of London bankers is to enter as above stated. The difference between the effect of the two modes is this: the London banker, if the customer's account is overdrawn, has a lien on the bill deposited with him, though not indorsed. The country banker, who, under this practice, always takes the bill indorsed, has not only a lien upon it, if the customer's account is overdrawn, but has also his legal remedy upon the bill by the indorsement. It is to be observed, however, that under neither system does any lien accrue to the banker, until the customer's account be overdrawn. Moreover, if, at the time of the country banker's bankruptcy, the customer's balance is in his favour, he has a right to recover, *in specie*, all such bills of his, as are in the banker's hands (*t*), or have been pledged by the banker with a third person with notice (*u*).

Whether a bill is to be considered as intended to be discounted or deposited, does not depend on whether it is indorsed, but on the question whether it was the intention to make an absolute transfer, giving full power to go against all parties to the bill, or merely to enable the person with

(*r*) *Ex parte Dumas*, 1 Atk. 233; 2 Ves. sen. 582; *Zinck v. Walker*, 2 W. Bl. 1156; *Ex parte Atkins*, 3 M., D. & De G. 103; *Jombart v. Woollett*, 2 M. & C. 402; *Ex parte Barkworth*, *In re Harrison*, 2 De G. & J. 194; 27 L. J., Bank. 5.

(*t*) *Giles v. Perkins*, 9 East, 12, 14. The presumption has been said to be that bills deposited with a banker are short bills. *Ex parte Armitstead*, 2 Glyn & J. 371.

(*u*) *Collins v. Martin*, 1 B. & P. 648.

whom it is deposited to receive the amount from the other parties. Indorsement, however, is *prima facie* evidence of the former (*x*).

The clearly settled rule is, that, if indorsed bills are deposited with a banker, and they are by him negotiated, and the banker afterwards becomes bankrupt, the original owner, who deposited them with the banker, who fails, can have no claim to recover them against the person holding them, provided such person had no notice of the deposit (*y*); and he can only come in as a general creditor of the banker under his bankruptcy (*z*).

Lord Eldon more than once observed, when sitting in bankruptcy, that it ought to be generally known, that if bills indorsed are remitted to bankers, they may dispose of them effectually, though contrary to the faith of the understanding between the parties, and the remitters can only come in as general creditors on the bankruptcy (*a*).

Permission to discount, given by the customer, for the purpose of reducing the balance, when the banker shall be in advance, is a circumstance controlling his absolute authority over the indorsed bills of his customer (*b*).

It is to be remembered also, that as, on the one hand, writing bills short is only evidence (*c*) to be rebutted by proof of the intentions of, or actual bargains or contracts between, the customer and banker; so, on the other hand, the circumstance of the bills *not* having been written short amounts to nothing, to show they were taken as cash, “unless there be a concurrence manifested at the time, or to be inferred from the habits of dealing between the parties, that they were to be considered as cash” (*d*). Hence, in a case where such bills were entered, bills and cash

(*x*) *Ex parte Tourgood*, 19 Ves. 229.

(*y*) *Bolton v. Fuller*, 1 B. & P. 546; *Collins v. Martin*, 1 B. & P. 648.

(*z*) *Ex parte Pease*, 1 Rose, 238; *Ex parte Wakefield Bank*, 1 Rose, 246.

(*a*) *Ibid.*

(*b*) *Ex parte Leeds Bank*, 1 Rose, 254.

(*c*) *Ex parte Pease*, 1 Rose, 239; 19 Ves. 25.

(*d*) *Per Lord Eldon, C.*, *Ex parte Sarjeant*, 1 Rose, 154.

together, in the running account without distinction, in the absence of evidence to show *aliunde* that they were mutually considered as cash, Lord Eldon appears to have thought, that the customer was entitled to the bills, on the bankruptcy of the banker (*e*).

Again, if there is a letter accompanying the remittance of bills, and giving directions as to how they are to be dealt with, that is evidence of intention, which cannot be got rid of by the subsequent unauthorized act of the banker in entering the bills short (*f*); for the books of a banker, not communicated to those dealing with him, are not evidence for him; though they may be evidence for them (*f*).

Where certain short bills, drawn before, but not payable till after, the bankruptcy of a firm of Lancaster bankers took place, had been deposited with the bankers, and by them negotiated with their correspondents in London, before the bankruptcy, the proprietor was entitled to be indemnified by the London bankers from the surplus securities which they had taken from the Lancaster bank (being title deeds), after satisfying their own lien on those securities. It ought to be stated, that the London bankers had given credit to the Lancaster bank for the amount of the bills in reduction of their claims upon the Lancaster bank; also that the balance of account between the customer, who was owner of the bills, and the Lancaster bank had always been in his favour (*g*).

The result of this decision is to show that, notwithstanding the usage, Dilworth & Co., the bankers, had no right to dispose of the bills, as they did, by transmitting them to the London bankers, and that although bills deposited in like circumstances had been in the half-yearly accounts sent to the customer since the commencement of his

(*e*) *Ex parte Sargeant*, 1 Rose, 154, commented on by Bayley, J., 2 B. & C. 430; and by Turner, J. J., 2 De G. & J. 194; 27 L. J., Bank. 5.

(*f*) *Ex parte Pease*, 1 Rose, 239.

(*g*) *Ex parte Armistead*, 2 Glyn & J. 371, 379.

account with the bank in 1822 considered as cash, *without objection on his part*, that did not amount to a permission to discount or negotiate (*h*).

In a second case arising on the bankruptcy of the same firm of Dilworth & Co., of Lancaster, it was ruled, that a customer was not entitled to recover short bills in the hands of his bankers on their bankruptcy, where the habit of dealing between the parties was such as to warrant an inference that they mutually considered and treated such bills as cash. The bills in question were indorsed by the customer generally, and paid into the bank, and indorsed by the bankers to their London correspondents. These bills were drawn previously to, but were not due until after, the bankruptcy (*i*).

*Doctrine of Ex parte Waring.*—Where undue bills are held by a banker as security against his acceptances for a customer, such bills will, on the bankruptcy of the former, be ordered to be given up to the customer upon his undertaking to indemnify the bankrupt estate against any liability that may arise upon the acceptances (*j*). If the customer also becomes bankrupt the holders of the acceptances have a right to have the bills deposited with the banker appropriated to meet the acceptances (*k*). This rule only applies where the estates are being judicially administered (*l*). Nor does it apply to any case in which the holders of the acceptances have not a right of double proof (*m*), that is to say, against the estate both of the drawer and the acceptor.

(*h*) *Ex parte Armistead*, 2 Glyn & J. 371, 379.

(*i*) *Ex parte Thompson*, *In re Dilworth*, 1 Mont. & M'A. 102. See also *Ex parte Benson*, *In re Dilworth*, 1 Deac. & C. 438.

(*j*) *Ex parte Burton Bank*, 2 Rose, 162.

(*k*) *Ex parte Waring*, 19 Ves. 344. See also *City Bank v. Luckie*, L. R., 5 Ch. 773; *Ex parte Lambton*, L. R., 10 Ch. App. 405; *Ex parte Banner*, L. R., 2 Ch. D. 278; 45 L. J., Bank. 73; *In re New Zealand Bank*, L. R., 4 Eq. 226; *Ex parte Dewhurst*, L. R., 8 Ch. App. 965; 42 L. J., Bank. 87; *In re Barnard Banking Company*, L. R., 10 Ch. 198.

(*l*) *Ex parte Gomez*, L. R., 10 Ch. App. 639; *Ex parte General South American Company*, L. R., 10 Ch. 625.

(*m*) *Vaughan v. Halliday*, L. R., 9 Ch. App. 561.

*Criminal Liability of Banker.*—A banker, who in violation of good faith and without authority takes upon himself to negotiate, transfer, or pledge any valuable security entrusted to him for safe custody, or who in any manner converts such security to his own use, is now liable to be indicted for a misdemeanor under the 24 & 25 Vict. c. 96, s. 76.

Bills remitted  
for sale.

*Bills remitted for Sale.*—Whenever bills of exchange are remitted for sale, and the proceeds are directed to be applied to a specific purpose, the property in the bills remains in the remitter, until the purpose for which they were remitted is satisfied; and, moreover, the value of the bills may be recovered from the purchaser of the bills who had notice of the purpose for which they were remitted, and of the misapplication of the proceeds by the agent. The bills, in the case in which this doctrine was recognized, were not indorsed (*m*).

A sale of bills of exchange by a factor is precisely the same in principle, and must be dependent on the same rules of law, as a sale of a bill by a banker; it may, therefore, here be cited in illustration of the foregoing statements, and as elucidating this part of the law of banking.

A foreign merchant remitted bills to his factor in London, with directions to sell them, advising him, at the same time, of his intention to draw for the proceeds. The factor received the bills and sold them, but before the receipt of the purchase-money became bankrupt and dishonoured the merchant's drafts for the amount of the bills. The sale in London of foreign bills of exchange usually (the report states) takes place on foreign post-days, and it is the custom of merchants not to pay the purchase-money until the foreign post-day next after the day of sale. In this case the bills were remitted on the 21st of March, on the 28th they were sold, and the price, according to the custom,

(*m*) *Muttylohl Seal v. Dent*, 8 Moore, P. C. 319.

would have been payable on the 31st: on the 30th, the factor stopped payment; and on the 20th of April following a fiat issued. Here the merchant, and not the assignees of the factor, were held to be entitled to the proceeds of these bills, notwithstanding the bills had been indorsed both by the principal and the factor, and were sold by the factor in his own name. The factor did not receive a *del credere commission*, nor did he take upon himself any liability, in case of non-payment of the purchase-money, in respect of such bills, but was accustomed on such sales to inform the principal of the names of the purchasers (*n*).

Bills in the hands of a banker are, in the event of bankruptcy, to be delivered up, subject only to the lien which the banker may have upon them for the balance of his account. If indorsed bills are deposited with a banker, and are by him negotiated to a third person, though the purpose for which they were deposited should be ever so cruelly disappointed by his becoming bankrupt, the original owner can have no claim to recover them in trover against such third person, provided he had no notice of such purpose (*o*).

On bankruptcy of banker.

*Bank Post Bills.*—Bank post bills are instruments used by bankers for remitting money abroad or to the country. They are payable to order and at a certain number of days after sight. When indorsed by the payee, they become payable to bearer.

Bank post bills.

If a person goes to his banker, and says, here are 1,000*l.*, in Bank of England notes, get me a bank post bill for them; the banker cannot receive them silently, as though acquiescing in the object of the customer, and then set up his lien and apply them in reduction of the balance, against the customer, on his account (*p*).

(*n*) *Ex parte Pauli*, 3 Deac. 169. The judgment was rested on *Scott v. Surman*, Willes, 400.

(*o*) *Bolton v. Puller*, 1 B. & P. 539, and see *ante*, pp. 146-7.

(*p*) See observations by Lord Lyndhurst, C., and Lord Brougham, in *Brandao v. Barnett*, 12 C. & F. 802.

Then, such expressions, used in the letters of remitters of bills or otherwise, as, that they expected the banker "to do the needful" (*q*), or "to cover us in due time" (*r*), do not enlarge the powers of the banker, or constitute a special contract, authorizing him to deal with the bills as his own, or relieve him from the obligation of retaining the bills till due, if remitted to receive payment of them.

A bank post bill had been remitted, by a customer to his bankers, with a letter desiring them to place it to his credit, and to send him a receipt, and credit had been given him, in his account, for the amount of the bill, and a receipt given him in the same way as if it had been a cash payment; the bank post bill, as is mostly the case for the sake of security, when bills are sent into the country, was unaccepted. Now, in such a case, if the customer had drawn a cheque upon the bankers for a sum exceeding his balance, supposing the bank post bill, for which he had credit in the banker's books, were not reckoned, and the bankers had refused to honour the cheque in respect of that deficiency, it seems probable that an action, such as it had been already shown a customer, who has an undoubted balance in his favour, may maintain in general on refusal to pay his cheque, could not have been supported; for the bankers might have answered truly, that an unaccepted bill, though of the Bank of England, payable seven days after sight, is, for many purposes, not equivalent to cash; and, in fact, their duty had been performed by transmitting the paper to London for acceptance, and raising the money upon it within a reasonable time. It was apparently, though with hesitation, concluded, therefore, that the bank post bill had never become vested, as property, in the bankers; in other words, it was never in the character of cash between these parties; the ordinary relation of banker and customer remaining between them not regulated or qualified by any particular agreement, express, or to be

(*q*) *Ex parte Smith*, Buck. 355.

(*r*) *Jombart v. Woollett*, 2 M. & C. 389.

inferred from circumstances or habits of dealing. The customer, therefore, was entitled to the proceeds as against the assignees (s).

*Relation of Banker and Country Correspondent.*—  
Having thus discussed the relations, rights and liabilities of customer and banker, upon the deposit of bills with the latter, it remains to notice what are the relations, in similar circumstances, when dealings between the banker in the country and his London correspondents are added to the former simple relation of banker and customer.

With country  
correspondent  
of bankers.

If a customer deposits indorsed bills with his country banker to obtain payment of them, and the banker remits them to the London bank, who are his correspondents to receive and pay bills, and as such agents have an allowance from him for so doing, and then the London bank becomes bankrupt, with the bills remaining undue in his hands, the trustee, upon receiving the proceeds of the bills, must pay them over to the country bank, subject to the lien of the London bankers for anything remaining due from the country bank to them upon the contract between them; the London bankers being the paid agents of the country bank for this purpose of getting bills paid and remitting the proceeds, and their power over the bills being limited to that purpose.

The same would be the case if the London banker, in the annual account between him and his correspondent in the country, there being no proof of agency, had entered the bills as the property of the correspondent. In the former case he would be considered as the factor of the country banker; in the latter, there is raised an express declaration of trust (t).

Such, then, are the relations of country banker and London correspondent, in case of the bankruptcy of the

(s) *Ex parte Atkins*, 3 M., D. & De G. 103. In place of the assignees a trustee now represents the creditors, see *ante*, p. 26.

(t) *Ex parte Pease*, 1 Rose, 232; *Ex parte Wakefield Bank*, 1 Rose, 243.

latter. The result to the customer remains to be inquired into.

Now, it would manifestly be unjust, that the customer should be affected by the bankruptcy of an agent whom he has no voice in selecting, or by the state of the accounts between his banker and that agent; therefore, although the country banker receives the proceeds of the bills, *minus* the sum requisite to satisfy the London banker's lien for advances (if any) and to indemnify his estate against acceptances or other engagements which he is under at the time of his bankruptcy on account of the country bank (*u*), yet he must pay a sum equal to the whole amount of the proceeds of the bills to the customer (subject of course to the state of the latter's account); for so only can his contract with, or duty to, his customer be performed.

So where bills were remitted by a country bank to their correspondents in London, and stood, at the bankruptcy of the latter, entered short, not being then due, it was ordered, on petition of the country bank, that the bills should be delivered up to them by the assignees. The country bankers, in this instance, were not creditors of the London bankers when this petition was first presented, the cash balance being against them, but had since become so, turning the balance in their favour, by taking up the acceptances given by the London house on their account (*v*). The country bankers must have accounted to the customer, who deposited the bills with them, for the entire proceeds of them.

The following is a case of bills deposited by country bankers with their London bankers, on which the London bankers had a lien, and on which they were, therefore, entitled to recover against the acceptor (who stood in the character of surety for the country bank), by virtue of the lien.

(*u*) *Ex parte Buchanan*, 1 Rose, 280.

(*v*) *Ibid.*; *Ex parte Rowton*, 1 Rose, 15; 17 Ves. 431; *Ex parte Burton Bank*, 2 Rose, 162.

A banking house at Abingdon, being indebted to their London correspondents, were urged by them to send them up any bills they could procure. Accordingly they sent up two bills *for account*, which had been accepted by A. *for their accommodation*, and which became due respectively the 19th March and the 19th April, 1814, each of them being dated the 13th December, 1813. The balance of the cash account, on each of the two first-mentioned dates, was considerably in favour of the country bankers. There were also periods subsequent to those dates, when the general account was in favour of the Abingdon bankers, but they afterwards failed, being at that time indebted to the London bankers in a sum exceeding the principal and interest of the bills. Lord Ellenborough, at Nisi Prius, held the meaning of the expression "for account," to be *for the then floating account*; and it was remarked, "There was a period when the lien on the bills of the London bankers ceased to attach, and when the bills might have been redeemed; but they were not reclaimed, and by allowing them to remain in the hands of the London bankers, their lien revested when, upon fresh advances made, the balance turned in favour of the London bankers." The action was brought by the London bankers against the acceptor, in virtue of their lien, and by way of enforcing and realizing it; and there having been a verdict in their favour, the Court in banc confirmed the verdict (*w*).

The decision on the following facts illustrates the relation of country banker and London correspondent, when the former deposits with the latter a security by way of *pledge*.

A customer gave his promissory note to his bankers to secure repayment of advances. They became bankrupt, but, at that time, the customer held bank notes of their bank to a greater amount than his promissory note, which he had all along reason to believe was still in the posses-

(*w*) *Atwood v. Crowdie*, 1 Stark. 483.

sion of the bankers. In fact they had deposited it, by way of pledge, with their London correspondents. The London bankers enforced the payment of it from the maker, the customer of the country bank; but the securities in the hands of the London bank were altogether more than sufficient to cover what was due to them from the bankrupts, and the surplus was returned to the assignees (*x*). As the customer might have set off the notes he held against the note in the hands of the bankrupts, he was entitled to recover its amount from the assignees. The promissory note was payable on demand, with interest. The case is singular in its circumstances. It is obvious that the customer, thinking that his promissory note was still in the hands of the bankers and so taking their notes, in the way of business, which he might have declined to do if he had known that they had parted with his note, was put in a different situation by their conduct (*y*).

Bills deposited  
by strangers.

*Bills deposited by Strangers.*—Several of the examples already cited have been cases where short bills have been deposited by customers, it being the law, that bills are considered short, not merely from the fact of their being entered so, but from a consideration of the habits of dealing between the parties, and all the circumstances.

The following is an instance of a decision upon facts somewhat different: where, viz., the bills were not short bills, and the party depositing was not a customer:—A person deposited with bankers two bills (one for 600*l.* and the other for 400*l.*) indorsed by him; it being agreed that he should draw for the amount of 1,000*l.*, the bankers refusing to discount them; he, in fact, only drew to the amount of 65*l.*, and the bankers employed a broker to discount the bills, and then became bankrupt in less than three weeks after the bills had been deposited with them.

(*x*) See *ante*, p. 26.

(*y*) *Ex parte Stadlon*, 3 M., D. & De G. 256.

It was not the usage of the bankers to treat any bills paid in by a customer as short bills, but to consider all paid in by any person as the property of the bankers, and to be paid in on the customer's general account; and in keeping their accounts they had not, like many other bankers, a cash column and a bill column, in their books, but it was their practice to blend both bills and cash; these were entered as bills. There was no cash balance in favour of the person who paid in these bills, at the time of the bankruptcy, and no evidence of any other banking account in his name than that on the bills. It was part of the agreement for his drawing, &c., that he was not to draw out the amount of the 400*l.* bill until the 600*l.* bill was paid. He was held to be entitled, on the bankruptcy, to the proceeds of the bill (z).

Here, it is evident, the property in the bills had never passed from the depositor; he was led to consider that the bankers would not buy them; their discounting them afterwards was without his knowledge; he would have been entitled to the bills, if they had remained in specie in the hands of the bankers.

*Bills and other Property in reputed Ownership of Bankers.*— Bills and other securities in reputed ownership of bankers.

It has been stated that bills of exchange, remitted to a banker, clothed with a trust, do not pass to the trustee upon the bankruptcy of the banker, as they would do if they were, in such case, within the doctrine of reputed ownership (a); but, nevertheless, under all other circumstances, bills of exchange, placed in the hands of a banker, will so pass. For instance, if A., *who has had no previous dealings with a banker in the country*, applies to him to give him a bill on London for three bills of exchange of which the applicant is holder, and the banker does so, and the bill given by the banker is afterwards dishonoured, this transaction is a complete exchange of securities, and

(z) *Ex parte Edwards*, 2 M., D. & De G. 625.

(a) Bankruptcy Act, 1869, 32 & 33 Vict. c. 71, s. 15 (5).

trover will not lie at the suit of A. for the three bills ; and even if the exchange has not been absolute and complete, the banker having become bankrupt, the three bills, having come to the hands of the assignees, must be considered as goods and chattels in the order and disposition of the bankrupt at the time of his bankruptcy, within the meaning of the bankrupt law. For the bills being indorsed to the bankers, they have the power of disposing of them, and, in like manner, A. has a similar power over the bill handed to him in exchange : and the former, being negotiable securities, and remaining in the hands of the bankers until their bankruptcy, must necessarily be held within the doctrine. This case has been held quite distinguishable from that of bills deposited by a customer clothed with a trust, for trust property is always considered not to be within the principle of the bankrupt law in this respect (*b*).

But it is not only when bills of exchange or other securities are deposited for a specific purpose with bankers, that the property remains in the depositor ; there is another class of cases, where money paid into a bank may, under certain circumstances, remain the property of the party paying in, and be, therefore, recoverable on bankruptcy from the trustee.

Thus, where a person deposited, after banking hours, a large sum of money with the manager of a provincial bank, at the banking house, the manager knowing that the bank was on the eve of stopping, though no resolution to that effect had been, in form, come to by the bankers, and he had put the money in a place by itself, separately from the funds of the bank, and the bank never after that day opened for business ; Lord Tenterden, C. J., held that the depositor was entitled to recover from the assignees (*c*).

(*b*) *Hornblower v. Proud*, 2 B. & A. 327; *Edwards v. Glyn*, 2 El. & El. 29; 28 L. J., Q. B. 350; 5 Jur., N. S. 1397.

(*c*) *Threlfal v. Giles*, cited 2 M. & Rob. 492; now trustee, *ante*, p. 26.

So where it was the usage of a banking house, that money, paid in after banking hours, should be put into a separate place of deposit, and entered in a counter book, but not carried to the customer's account till the next day; and a customer paid in a 500*l.* Bank of England note after banking hours, and the banker having before resolved not to re-open for business, put the note in a separate place, and next morning stopped payment and became bankrupt, the customer recovered from the assignees, the bank note being held to remain his property (*d*).

It may be further observed, that by the usage the customer was considered to be entitled to draw upon money so paid in, at the opening of the bank on the following morning. The counter book was a book in which an entry was made of all moneys paid into the bank, as they were paid in, and was always resorted to, for the purpose of ascertaining whether money had been paid in by a customer during the day, before a cheque of such customer was dishonoured. The bank note was not entered in any other book of the bank, nor was it in any way carried to the account of the customer, or entered in his pass book, and never was mixed with the assets of the house (*d*).

A sum of money, consisting partly of Bank of England notes and of country bank notes, partly of cheques on country bankers and partly of coin, was, after banking hours on a Saturday evening, placed in the hands of the manager of the bank, at the banking house, where he resided, and he gave a receipt for the same, *with the words "to be accounted for on demand,"* dated as of the following Monday; they were not entered in any of the bank books by the manager, or in any way mixed with the bank moneys, but were placed by the manager in a bag, in which there was nothing else. The bank never opened again for business. The partners in it were afterwards made bankrupts: the money so deposited was held, in bankruptcy, to pass to

(*d*) *Sadler v. Belcher*, 2 M. & Rob. 489.

the assignees (*f*). In this case, however, the manager was in the habit of receiving deposits after banking hours, and the customers, from whom the above-mentioned deposit was received, were in the habit of making deposits after the bank had closed, and such deposits had always been treated by both parties as if regularly made. One of the partners had already resolved to commit an act of bankruptcy, and, on the same evening of Saturday, did commit an inchoate act, unknown to the other and remaining partner; the firm did not become bankrupt until the Monday.

Stock or  
bonds.

*Stock or Bonds.*—Cases of fraudulent disposal by bankers of stock or bonds belonging to customers sometimes occur, in which they have attempted to repair the injury done to the customers by substituting securities of their own in the place of the securities with which they have improperly dealt, but such attempts are, for the most part, wholly ineffectual, in the case of bankruptcy, as against the trustee.

Thus, a customer of a banking house was owner of 16,000*l.* Navy Five per Cent. Stock, which stood in the name of one of the partners of the bank; the partner sold out the whole of the stock, and applied the proceeds to the purposes of the banking house, at the same time enclosing in an envelope certain bonds belonging to the house, together with a memorandum to this effect—"Borrowed and received of J. Balfour, Esq. (the customer) 16,000*l.* Navy Five per Cents., which we promise to replace; and we have deposited with him, as collateral securities, these bonds of the Earl of Oxford and Mortimer, and others, which we promise to assign when required,"—and sealing up the bonds, and writing on the envelope, "The property of J. Balfour, Esq.;" this packet

(*f*) *Ex parte Clutton*, 1 Fonb. 167; see *Sadler v. Belcher*, 2 M. & Rob. 489, the difference between the two cases is, that, in the latter, the determination to commit an act of bankruptcy has been taken by all the partners before the money was paid in; moreover, no receipt was given.

was deposited in an iron chest, among securities belonging to other customers; and in the evening of the day before the bank stopped payment, it was sent to the customer, who then first learnt that the stock had been sold:—It was held that, as the possession of the bonds had never been out of the bankers till the very eve of the bankruptcy, when they could not give a preference, the customer had no lien on the bonds, but must give them up to the assignees (*f*).

#### DEPOSIT OF SECURITIES AGAINST ADVANCES.

Having observed what is the effect of depositing securities for some specific purpose, not giving any property in them to the bankers, in cases which, for the most part, have arisen where the customer's account with the bankers has been in his favour, let us proceed to investigate the effect of depositing securities when the balance is against him, and when the object of the deposit is to save harmless the bankers against their advances to the customer.

Securities  
against ad-  
vances.

*Policies of Insurance—Notice.*—A policy of insurance is a chose in action within the meaning of the proviso in subsection 15 of section 5 of the Bankruptcy Act of 1869; and, consequently, is exempt from the operation of the “apparent ownership” clause. A banker, therefore, who receives such an instrument by way of equitable mortgage for money advanced by him to the mortgagor, need not give notice to the office in order to protect himself against the trustees in bankruptcy of the mortgagor (*g*). Under the late Bankruptcy Act no such exemption in favour of choses in action was made, accordingly notice was formerly necessary to take the policy out of the apparent ownership of the assured (*h*).

Policies of  
insurance—  
Notice.

(*f*) *Wilson v. Balfour*, 2 Camp. 580.

(*g*) *Ex parte Ibbitson*, 8 Ch. D. 519; *In re Irving*, 7 Ch. D. 419.

(*h*) *Ex parte Armstrong*, 3 M., D. & De G. 143; *Gordon v. East India Company*, 7 T. R. 237; *Ex parte Tennyson*, Mont. & Bli. 67; *Edwards v. Martin*, L. R., 1 Eq. 121.

Notice, however, should be given to guard against any subsequent mortgagee without notice gaining priority by giving notice (*k*). And to perfect the title as against the office, and so prevent it from taking a surrender of the policy (*l*), or from paying the sum secured thereby to the assured (*m*), notice to the office must now be in writing, by 30 & 31 Vict. c. 144 (*n*).

As to whom the notice should be sent.

*As to whom the Notice should be sent.*—All risks as to whether notice has been properly given to the insurance company will be avoided, by giving written notice to the officer representing the company, which, in the case of an incorporated company, would be the head or chairman, or the directors, or the secretary, according to the terms of the charter, or incorporating statute; and in the case of a joint-stock company, would be the public officer of the company, or secretary, or agent of the company, according to the terms of the deed of settlement or articles of association, and the usual practice of the company (*o*).

Assignment of policies.

*Assignment of Policies.*—By 30 & 31 Vict. c. 144, an assignee of a policy of insurance may sue at law in his own name, provided a written notice has been given to the company. The date of such notice shall regulate the priority of all claims under any assignment. S. having effected two policies upon his life for the purpose, as he expressly informed the assurance company, of enabling him to give C. a security for a debt which exceeded the

(*k*) *Wilmot v. Pike*, 5 Hare, 19. Where a person lent money on a memorandum of deposit of a policy, and was told by the borrower that his policy was at home, but took no steps to verify the statement or to make further enquiries respecting it, and as a matter of fact the borrower had previously deposited it with another for money advanced to him, who had, however, given no notice to the company, it was held that such subsequent equitable mortgagee was charged with notice and gained no priority by the fact of himself giving notice. *Spencer v. Clarke*, 9 Ch. D. 137; 47 L. J., Chanc. 692.

(*l*) *Fortescue v. Barnet*, 3 M. & K. 36.

(*m*) *James v. Gibbons*, 9 Ves. 410.

(*n*) *Alletson v. Chichester*, L. R., 10 C. P. 319; 44 L. J., C. P. 153.

(*o*) Per Sir E. Sugden in *Ex parte Hemmisy*, 2 Drew. & War. 555.

amount of the policies, deposited them with C., at the same time asking him by letter to instruct his, C.'s, solicitor to prepare the necessary assignment. C., however, never took any assignment. S. died insolvent, having made a will appointing executors, but no representation was taken out to his estate. C. then gave the company notice in writing of the death, and that he held the policies as security for his debt, and the company acknowledged the receipt of the notice in the terms of the Policies of Insurance Act, 1867, s. 6. Proper evidence of S.'s death having been subsequently produced to the company, they wrote to C. that the claims under the policies would be paid at the expiration of three months, but the assent of S.'s legal personal representative would be required before settlement. After the expiration of three months, C., being unable to obtain payment, brought an action against the company insisting that S.'s deposit and letter constituted an equitable assignment of the policies within the act, and therefore enabled him to give a valid discharge for the moneys. Held, that there had been no equitable assignment of the policies within the act, and that the company were justified in refusing to pay him in the absence of S.'s legal representative. It was ordered, however, that payment of the policy moneys to the plaintiff should be made after deducting the company's costs, the legal personal representative being dispensed with under the power given to the court by section 44 of the Chancery Amendment Act, 1852 (15 & 16 Vict. c. 86) (*p*). Nor does an agreement in writing to execute on request an effectual mortgage of a policy of insurance, deposited at the time of the agreement, as security for a loan constitute "an assignment" of such policy within the meaning of the act (*q*).

*Shares.*—It seems now to be settled that shares in a joint Shares.

(*p*) *Crossley and City of Glasgow Life Assurance Co.*, L. R., 4 Ch. D. 421.

(*q*) *Spencer v. Clarke*, L. R., 9 Ch. D. 137; 47 L. J., Chanc. 692.

stock company are not *choses in action* within the meaning of the exception in the apparent ownership clause of the Bankruptcy Act, 1869. A banker, therefore, who receives certificates of shares by way of deposit for money advanced by him must give notice of his equitable mortgage to the company, not merely to protect himself against subsequent incumbrancers without notice (*v*), but also to prevent the property secured thereby being seized by the trustee in bankruptcy of the mortgagor as being property in the apparent ownership of the latter with the consent of the true owner (*s*). Equitable interests in such shares, however, are “*choses in action*” within the exception (*t*), as also are debentures (*u*).

In *Ex parte Union Bank of Manchester* (*x*) a trader deposited with a bank the certificates of five shares in a gas company to secure the balance of his current account. The bank gave no notice to the company of the deposit. Bacon, C. J., held that such shares were not “*choses in action*” within sub-sect. 5 of sect. 15 of the Bankruptcy Act, and that, as no notice of the mortgage had been given to the company, the shares were properly distributable among the creditors of the registered owner (*y*).

Notice of the mortgage should be in writing, but a written notice is not absolutely necessary (*z*). Notice to a director or secretary of the company is, as a general rule, notice to the company (*a*).

The managing director, who was also the sole secretary,

(*v*) The fact of his possessing the shares would in most cases charge the subsequent mortgagee with notice. See *Spencer v. Clarke*, *supra*.

(*s*) *Union Bank of Manchester*, L. R., 12 Eq. 354; 40 L. J., Bank. 57.

(*t*) *Ex parte Barry*, L. R., 17 Eq. 113; 43 L. J., Bank. 18. And see *In re Irving*, 7 Ch. D. 419.

(*u*) *Re Pryce*, 4 Ch. D. 685.

(*x*) *Supra*.

(*y*) See also *Ex parte Barry*, L. R., 17 Eq. 113; *Ex parte Stright*, 2 D. & C. 314.

(*z*) *Ex parte Richardson*, M. & C. 43.

(*a*) *Allatson v. Chichester*, L. R., 10 C. P. 319; *Ex parte Harrison*, 3 M. & A. 50.

of a company registered under the Companies Act of 1856, joined with all his co-directors in making an equitable mortgage of their shares to a bank as a security for an advance to the company. The bank gave no *formal* notice to the company. It was, nevertheless, held that their lien prevailed as against the trustee in bankruptcy of the managing director, because, from the nature of the transaction itself, the company were, through their directors, affected with notice of the mortgage (*b*).

A certificate of shares is merely a solemn affirmation, under the seal of the company, that a certain amount of stock stands in the name of the individual mentioned in the certificate (*c*).

It is the duty of a person receiving, as an equitable

(*b*) *Ex parte Stewart, In re Shelley*, 4 De G., J. & S. 543. In the case Lord Westbury said: "According to the construction which has long been put upon this clause (sub-sect. 5 of sect. 15 of the Bankruptcy Act, 1869) the circumstance of the person having the equitable right not giving notice to the person in whose hands at law the property may be considered as resting is a fact from which permission may be inferred on the part of the true owner that the property shall remain in the hands of the bankrupt as the reputed owner. It is apparent that neglect may not be evidence of consent. But it has been held that the neglect by an equitable purchaser or mortgagee to give notice of his security amounts to a sufficient proof of consent that the bankrupt shall remain the apparent owner. Then we come to the enquiry whether in this case there was that neglect. . . . Here is a company actually constituted with seven directors, one of whom is also the manager, being at the same time the secretary, and who afterwards becomes bankrupt. It is considered desirable to have an advance of money for the purpose of the company. Accordingly the directors apply to the bank for a loan, and the seven directors individually arrange with one another to deposit the certificates of their several shares with the bank for the moneys which are at the time advanced and lent by the bank. The secretary is a party to the transaction and has a complete knowledge of it. Every one of the directors is a party to it and has a complete knowledge of it. It is impossible to say that this was a matter not authorized by the constitution of the partnership and not having direct reference to the affairs of the company. In a word, it was a company transaction. Could it be possible for the bank to have affected any mind in a more explicit manner than the transaction itself affected the minds of the directors? . . . There has been no neglect in giving notice on the part of the bank, since they could not have given a more effectual notice than that which was actually derived by every party to whom they might have given it from the transaction itself. There cannot, therefore, be imputed to the bank any consent that the bankrupt should remain the reputed owner of the shares. It would have been perfectly unnecessary for the bank to have written a formal letter reporting everything that had been done to the parties who were already fully acquainted with it."

(*c*) *Shropshire Union Railway and Canal Co. v. The Queen*, L. R., 7 H. L. 496; 45 L. J., Q. B. 31.

mortgage of railway stock, the certificates of the shares thereof, to inquire what is the real position of the person pretending to mortgage it, for if such person has only the legal title by having the certificates in his possession, but is, in truth, merely the trustee for another, the equitable mortgagee will be unable to enforce his claim in opposition to the original *cestui que trust* (c).

And in order to take away a pre-existing equitable title, something tangible and distinct, having the strong and grave effect of producing such a result (such as fraud or negligence on the part of the person possessing the equitable title), must be clearly proved to have taken place. The burden of such proof lies on the person seeking to affect the previous equitable title. H., a banker, was the banker of a railway company, he was also one of its directors. Under certain business arrangements of the company he was intrusted with the possession of certificates which represented shares, and those shares he held as trustee for the company; he converted the shares, the conversion was noticed, he gave an explanation, replaced the shares, and continued to hold the certificates as before, and stood on the register as the apparent owner of them. He borrowed money of R., and deposited the certificates with R., who held them for some time, and died without having taken any step to be registered as the owner of the shares. R.'s widow and executrix applied to be registered as the owner; her application was refused. She moved for a mandamus to compel registration; the Court of Queen's Bench refused the mandamus. The Exchequer Chamber reversed that decision, and ordered it to issue. On appeal to the House of Lords:—Held, that this was the ordinary case of a trustee abusing his trust; that if R. had made proper inquiries he would have found that H. was only a trustee; that negligence, sufficient to affect their equitable title, could not be imputed to the directors and the company, and that, consequently, the equitable title of R. could not

*c. Shropshire Union Railway and Canal Co. v. The Queen*, L. R., 7 H. L. 496; 45 L. J., Q. B. 31.

prevail against the earlier equitable title of the company (*d*).

Where a legal assignment of shares is intended to be effected, the assignee must see that the proper transfer is completed according to the terms of the statute, or deed of settlement, or articles of association under which the company is constituted or regulated. And where he has done this, any pre-existing title is defeated (*d*). Whether a transfer of shares in a company can or cannot be made without the production of the share certificates is a matter within the discretion of the directors (*e*).

*Scrip Certificate*.—A scrip certificate is an acknowledgment by a company or its projectors that the person named thereon (or more commonly called the owner) is entitled to a certain specified number of shares in the undertaking (*f*). This certificate is generally given to an applicant allottee, upon payment of the amount due on the allotment, and is afterwards exchanged for a share certificate, upon completion of the payments. Until this exchange has been made, the applicant is not usually a shareholder, but merely possesses a right to become so, and to transfer that right to another (*g*). Scrip certificates, when proved by custom to pass by delivery, cannot be recovered back from a bonâ fide holder for value who has obtained them from a person in whom no title vested (*h*). These certificates must bear a penny stamp (33 & 34 Vict. c. 98, s. 23). Scrip certificate.

*Title Deeds*.—With respect to the deposit of title deeds, Title deeds. it is desirable to state the principal results of the decisions, many of which tend to show that bankers have acted at

(*d*) *Shropshire Union Railway and Canal Co. v. The Queen*, *supra*.

(*e*) *Ib.*, per Lord Chancellor Cairns.

(*f*) *Lindley on Partnership*, p. 123.

(*g*) *Eustace v. Dublin Trunk Railway*, L. R., 6 Eq. 182.

(*h*) *Goodwin v. Roberts*, L. R., 1 App. Ca. 476; 45 L. J., Ex. 748; 24 W. R. 987.

times, in such cases, as though they were *inopes consilii*, and have suffered accordingly.

It is not necessary, for the purpose of effecting an equitable mortgage, that *all* the title deeds relating to the estate should be deposited, provided real and material portions of them are deposited (*i*).

A deposit of title deeds, as a security for a debt, will, without more, create in equity a charge upon the property; but where it is accompanied by a written document the terms of that document must be referred to in order to ascertain the exact nature of that charge (*k*).

The prudence and propriety, with a view of preventing disputes and removing all ground for question and litigation, have been pointed out, of always taking a memorandum of the object and purpose for which the deposit was made, and numerous instances have occurred in which much delay in realizing the securities would have been saved to bankers if their advisers had been duly alive to these considerations. For instance, it has been laid down, that where there is no memorandum, an equitable mortgage so created will *prima facie* be considered only as a security for a debt then due (*l*). A deposit may, of course, be made to cover future advances and such an intention can be proved by parol evidence (*m*).

An agreement to give a mortgage, and the delivery of title deeds for the purpose of having the agreement carried into effect, will constitute an equitable mortgage (*n*).

When title deeds are deposited by way of equitable mortgage, and a memorandum merely states the purpose for which they are deposited, it is not an agreement for a mortgage, and does not require to be stamped (*o*).

(*i*) *Lacon v. Allen*, 26 L. J., Chanc. 18.

(*k*) *Shaw v. Foster*, L. R., 5 H. L. 321; 42 L. J., Chanc. 49.

(*l*) *Ex parte Whitbread*, 19 Ves. 209; *Ex parte Mountfort*, 14 Ves. 606.

(*m*) *Ex parte Mountfort*, *supra*, *Ex parte Hooper*, 1 Mer. 7.

(*n*) *Hockley v. Bantock*, 1 Russ. 141; *Keys v. Williams*, 3 Y. & C. 55.

(*o*) *Meek v. Bayliss*, 31 L. J., Chanc. 448. See Stamp Act, 1870, s. 105.

Fixtures annexed to the realty, whether tenant's fixtures or not, will be included in the equitable mortgage created by the deposit of deeds, whether such deeds relate to freehold or leasehold property, and whether the fixtures are erected subsequently to the deposit or before.

Thus a person deposited with his bankers the title deeds relating to certain steam-mills, cottages, land, buildings and machinery of which he was possessed, for an estate in fee simple. The original memorandum of deposit was not forthcoming, but a draft of it was proved, and it purported to be made for securing to the bank all moneys then owing to them by the depositor, and which should in future be advanced to him by them, together with bankers' commission, and all other usual charges, and also all balances which should at any time be due from the depositor on his banking account, together with interest for the same after the rate of 5*l.* per cent. per annum. After the date of the deposit the depositor erected buildings for crushing bones, and also for crushing oil seeds, with the necessary machinery and steam-engine, all affixed to the freehold. This was held to be an equitable mortgage, giving a lien on the fixtures, whether erected before or after the time of the deposit, including those that were removable as between landlord and tenant (*p*).

In cases of equitable mortgages by manufacturers, questions sometimes arise as to the passing, under the deed, of the machinery, &c.

(*p*) *Ex parte Price*, 2 M., D. & De G. 518. See also *Ex parte Lloyd*, 3 Deac. & C. 765; *Ex parte Broadwood*, 1 M., D. & De G. 631; *Ex parte Cowell*, 17 L. J., Bank. 16; *Ex parte Bentley*, 2 M., D. & De G. 591; *Williams v. Evans*, 23 Beav. 239; *Tebb v. Hodge*, L. R., 5 C. P. 73; *Meux v. Jacobs*, L. R., 7 H. L. Cas. 481. In *Ex parte Tweddle*, *In re Trethowan*, L. R., 5 Ch. D. 559; 46 L. J., Bank. 43, a lease of a shipbuilding yard and the trade fixtures therein were assigned to a shipbuilder to hold the leasehold premises for the residue of the term and the trade fixtures absolutely. He deposited the lease and the assignment with his bankers for advances made by them to him. No memorandum of charge was executed. Held, among other things, that the equitable deposit did not comprise the tenant's fixtures. This decision was appealed from, but the parties effected a compromise before the case was reconsidered, and, *query*, as to its correctness.

In *Re Lloyd's Banking Company* (*q*), the rule was stated to be that, where there is a mortgage of a manufactory and part of the machinery used in it is a fixture, the mortgage passes the fixture.

The difficulty that arises is in deciding what constitutes a *fixture* as a matter of fact. The following case may be useful as showing the principle that has been adopted for the decision of such questions:—

The owner in fee in possession of land and premises deposited the title deeds with a banking company, as an equitable mortgage to secure the balance of his account with them for the time being. He then erected a mill, and set up, not only steam power applicable to all mills, but machinery applicable only to the purposes of a particular manufacture which he carried on there. He afterwards granted a bill of sale of all the machinery, the assignee having notice of the previous deposit of the deeds. Held, as between the mortgagees and the assignee, that all of the machinery which was annexed to the floor, ceilings, or sides of the building in a quasi permanent manner by means of bolts and screws passed to the mortgagees; and that it made no difference that the object of annexation was merely to steady the machines when in use, and that they could be removed without any injury to them or the freehold; nor that the machines were in the nature of trade fixtures, which would, as between landlord and tenant, belong to the tenant (*r*).

Again, in *Holland v. Hodgson* (*s*), it was held that an article affixed to the soil by the owner of the fee, though only by the means of bolts and screws, was to be considered as part of the land; at all events, where the object of setting up the article is to enhance the value of the premises to which it is annexed for the purposes to which those premises are applied (*t*).

(*q*) L. R., 4 Ch. App. 634.

(*r*) *Longbottom v. Berry*, L. R., 5 Q. B. 123; 39 L. J., Q. B. 39.

(*s*) L. R., 7 C. P. 328.

(*t*) See also *Tebb v. Hodge*, ante, and *Moss v. Jacobs*, ante, *Ex parte*

An equitable mortgagee by deposit of a lease is not bound, *at the suit of the lessor*, to take a legal assignment of the lease, nor is he liable to the covenants of the lease (*u*); for there is no privity between him and the lessor until he has made himself legal assignee; and so to hold "would effectually prevent anybody from ever taking a deposit of a lease as a security for a sum of money; for no man in his senses would take a deposit of a lease if he were thereby to render himself liable to the covenants of the lease" (*u*).

Independently of the statute 15 & 16 Vict. c. 86, s. 48, the proper remedy of an equitable mortgagee by deposit of title deeds, whether with or without a memorandum, is by foreclosure, and not sale, unless it is otherwise agreed (*x*).

If the banker, having such equitable mortgage by deposit of the title deeds of an estate in fee, enters into the receipt of the rents of the mortgaged estate, such receipt amounts to a payment, *prima facie*, either of the principal or interest of the debt, as the case may be, so as to take the case out of the Statute of Limitations (*y*).

It is to be borne in mind, however, that if a banker, being equitable mortgagee of land, takes upon him to assume the right of taking possession, without applying to a Court of equity for leave or directions to do so, and unreasonably and unnecessarily, for the purpose of defending any right given him by his mortgage, defends an action brought against him in consequence of his so acting, and

*Moore's Company*, 14 Ch. D. 379; *Reg. v. Inhabitants of the Parish of Lee*, L. R., 1 Q. B. 241; *Langton v. Horton*, 1 Hare, 549.

(*u*) *Moore v. Greg*, 2 Ph. 717; *Cox v. Bishop*, 26 L. J., Chanc. 389. See *Wright v. Pitt*, L. R., 12 Eq. 408; 40 L. J., Ch. 558.

(*x*) *James v. James*, L. R., 16 Eq. 153; *Samble v. Wilson*, 5 N. R. 395; *Backhouse v. Carlton*, L. R., 8 Ch. D. 444.

(*y*) *Brocklehurst v. Jessop*, 7 Sim. 438. See *Fordham v. Wallis*, 10 Hare, 228. Such a payment, however, within the meaning of 1 Vict. c. 28, so as to take the case out of sect. 2, must be a payment of principal or interest by the mortgagor or his agent, or some person bound to pay on his behalf. The payment of rent by the tenant is not such a payment on behalf of the mortgagor. *Chinnery v. Evans*, 11 H. L. C. 115; *Harlock v. Ashberry*, W. N., 1882, p. 15.

is unsuccessful in his defence, he will not be allowed the costs out of the mortgaged estate (z).

In reference to questions respecting a freehold or leasehold security, it may be well to point out, that the deposit of the lease of a house, or deeds of conveyance of a house and furniture to the depositor, does not, by any means, necessarily extend to charge the furniture in the house.

Thus, where A. deposited with B., as security for a debt, certain deeds, by which a freehold house at Bognor and the furniture therein were conveyed and assigned to A., and the memorandum of deposit was as follows:—“Herewith I hand you the title deeds of my Bognor estate, to be held by you, &c. ;” these words were decided not to extend to the furniture, which, under them, did not pass to B., nor did any interest in the furniture. If it had been the intention that the furniture should be included in the security, B. ought to have taken care that A. so expressed his memorandum of deposit as to include the furniture, and that a schedule was added enumerating the different articles (a).

It seems, however, that, when a lease of a house engaged in trade is deposited as an equitable mortgage, the depositor is entitled to the whole of the price, on the sale of the lease or goodwill of the business whether it is considered to arise from the goodwill, or from the value of the lease independently of the goodwill (b).

A written agreement for a lease in which the lessee undertakes to put up fixtures of a given value, and the lessor to grant a lease of, and to lend a sum on, the premises as fitted, creates an equitable mortgage (c).

When the deposited documents are title deeds which have been deposited with the customer by a third party, with a written memorandum of the object of their deposit

(z) *Dryden v. Frost*, 3 M. & C. 670; *Lomas v. Hyde*, 2 Vern. 185.

(a) *Ex parte Hunt*, 1 M., D. & De G. 139.

(b) *Chasman v. Deves*, 5 Russ. 29. See *Stewart v. Gladstone*, L. R., 10 Ch. D. 626; *Lery v. Walker*, ib. 436.

(c) *Tebb v. Hodge*, L. R., 5 C. P. 73.

with him, it is not necessary, to constitute a valid and equitable sub-mortgage to a banker, that the original memorandum should also be deposited (*d*).

It is now settled that if bankers take a mortgage to secure a specific sum and future advances, and the mortgagor makes a second mortgage to A. in a similar form with notice of the prior mortgage, they will not be entitled to priority for further advances made after notice of the mortgage to A. (*e*).

The owner of land, after depositing the title deeds with a bank as security for all sums then or thereafter to become due on his general balance of his account with the bank, contracted with the knowledge of the bank to sell the land to one who had notice of the terms of the deposit. The vendor afterwards paid into his own account at the bank sums which in the whole exceeded the debt due to the bank on his balance at the time of the contract of sale, so that on the principle of *Clayton's case* (*f*), that debt was discharged. The bank, without giving notice to the purchaser, continued the account and made fresh advances to the vendor, so that on the general balance there was always a debt to the bank. The purchaser, who never had notice of the fresh advances, paid the purchase-money by instalments to the vendor:—Held, that, on the principle of the above case, the bank had no charge on the land as against the purchaser for the fresh advances, nor upon the purchase-money (*g*). In giving judgment, Lord Blackburn said, “ This raises the question, whether anyone purchasing land, with notice that the title deeds have been deposited with a bank, is bound to enquire whether the bank has, after receiving notice of this purchase, made fresh advances on the security of the unpaid vendor's lien; or whether the burden does

(*d*) *Ex parte Smith*, 2 D. & De G. 587; *Ex parte Farley*, 1 M., D. & De G. 683.

(*e*) *Hopkinson v. Rolt*, 9 H. L. Cas. 541; 28 L. J., Chanc. 41. See *Menzies v. Lightfoot*, L. R., 11 Eq. 459.

(*f*) 1 Mer. 585.

(*g*) *London and County Banking Company v. Ratcliffe*, 6 App. Cas. 722.

not lie on the bank, advancing on the security of the unpaid vendor's lien, to give notice to the purchaser that it has so done, or intends so to do. No case was cited in which any such point had been discussed; but I think both convenience and principle strongly point to the burden of giving notice lying on the bank, and not on the purchaser, whose enquiries might often be annoying and impertinent" (*h*).

A banking house, in consideration of an existing debt, and of a further advance of money to a customer, obtained from him a deposit of all the title deeds of certain freehold and copyhold lands of which he was seised, with a written memorandum signed by him, regularly charging the lands with payment of the whole debt and interest. Other creditors subsequently recovered judgment against him, and, under 1 & 2 Vict. c. 110, s. 13, sued out *elegits*, under which the sheriff delivered to them the whole of the land. The bankers, having filed a bill in chancery, praying that they might be declared to have an equitable mortgage upon the land, and to be entitled to priority over the *elegits* and judgments, had their prayer granted, *there having been no laches on their part*, and their title being perfected before the judgments were recovered (*i*).

The bankers, it may be observed, having perfected their title as equitable mortgagees, must have been preferred to the judgment creditors in this case, independently of the statute (*i*).

Indeed, such perfected equitable mortgage will prevail, even against an extent at the suit of the Crown (*j*), except where the mortgagor is an accountant to the Crown (*k*).

A banker's equitable mortgage will not prevail against that of a prior equitable mortgagee unless the latter has

(*h*) *Ibid.*, at p. 739.

(*i*) *Whitworth v. Gaugain*, 3 Hare, 416; affirmed, 1 Ph. 728, and adopted, *Watts v. Porter*, 3 El. & Bl. 743.

(*j*) *Cusbard v. Att.-Gen.*, 6 Price, 411; confirmed, *Watts v. Porter*, 3 El. & Bl. 743, 753.

(*k*) *Broughton v. Davies*, 1 Price, 216.

been guilty of negligence (*l*), because where the equities are equal priority in time prevails. When money has been lent on an equitable mortgage without notice of a prior equitable agreement the lender gains no priority over the owner of the prior equitable interest by getting in the legal estate after he has had notice that his mortgagor has made himself a trustee for the owner of the prior equity (*m*). A banker's equitable mortgage, moreover, is defeated by a person claiming under a legal title, though obtained subsequently to the equitable mortgage, provided he had no notice of the prior incumbrance and was a purchaser for value. This proceeds on the doctrine that when the equities are equal, the legal estate prevails (*n*). But if the legal owner has been guilty of negligence then the rule is otherwise. Thus: A mortgagee of leasehold property lent the lease to the mortgagor for the purpose of raising money upon it; but at the same time told the mortgagor to inform the person from whom he proposed to borrow, that he had a prior charge. The mortgagor borrowed money from his bankers, and deposited the lease as security without giving them notice of the mortgage:—Held, that the mortgage must be postponed to that of the bankers (*o*)

*Equitable Mortgage by Company.*—A company deposited title deeds with a bank as collateral security for bills under discount. At the time the company was wound up, it was indebted to the bank in respect of other bills than those actually discounted, and the securities realized more than was sufficient to cover the latter bills:—Held, that the

(*l*) *Dixon v. Muckleston*, L. R., 8 Ch. 155; *Bradley v. Riches*, 9 Ch. D. 189; 39 L. T. 78.

(*m*) *Mumford v. Stowasser*, L. R., 18 Eq. 556. See also *Ratcliffe v. Barnard*, L. R., 6 Ch. 652; *Maxfield v. Burton*, L. R., 17 Eq. 15; 43 L. J., Ch. 46; *Saffron Walden Building Society v. Rayner*, L. R., 10 Ch. D. 696; 48 L. J., Ch. 402.

(*n*) *Young v. Young*, L. R., 3 Eq. 801; *Agra Bank v. Barry*, L. R., 7 H. L. Cas. 135; *Pitcher v. Rawlins*, L. R., 7 Ch. 259; *Lee v. Clutton*, 45 L. J., Ch. 43. The fact of the banker possessing the title deeds will be strong evidence to show the subsequent legal owner must have had notice of the prior incumbrance. *Maxfield v. Burton*, L. R., 17 Eq. 15; *Spencer v. Clarke*, 9 Ch. D. 137.

(*o*) *Briggs v. Jones*, L. R., 10 Eq. 92; 22 L. T. 212.

company could effect a mortgage by deposit of deeds without complying with the formalities by its articles of association upon the execution of mortgage deeds: that the bankers were not in the position of officers of the company, who are bound to see that the required formalities were complied with, and that the bank was entitled to hold the balance of the proceeds upon the sale of the securities to meet the whole amount due to it by the company (*p*).

But in a later case it has been held that the mortgagee cannot so retain the surplus proceeds (*q*).

The articles of association provided that a company might, with the sanction of a general meeting, borrow money not exceeding in amount the one-half of the nominal capital upon mortgage. The nominal capital of the company was 100,000*l*. The company passed a resolution authorizing a mortgage to the extent of one-third of the nominal capital. A few weeks after this, the account of the company being overdrawn to the extent of more than 23,000*l*., and the bankers pressing for security, the directors deposited with them the title deeds of the property on which the company carried on their business, and gave a memorandum of deposit under the seal of the company, making the deeds a security for the balance of account up to 25,000*l*. Within six months after this a resolution was passed for winding up:—Held, that the express power did not negative the general power, the rule being that a company may mortgage its property, unless it is expressly prohibited by its articles from so doing, and that the security was valid, notwithstanding it was given to secure a past debt (*r*).

Exchequer  
bills.

*Exchequer Bills.*—Exchequer bills, provided their blanks

(*p*) *General Provident Assurance Company, In re National Bank*, L. R., 14 Eq. 507; 41 L. J., Ch. 823.

(*q*) *Talbot v. Frere*, 9 Ch. D. 568; 27 W. R. 148, not following *In re National Bank*, *supra*, on this point.

(*r*) *In re Patent File Company, Ex parte Birmingham Banking Company*, L. R., 6 Ch. 83; 40 L. J., Ch. 190.

are not filled up, are negotiable instruments and pass by delivery.

Where A. deposited an exchequer bill (with the payee's name in blank) with B., in order that he might sell it, but B., instead of doing so, placed it in the hands of his bankers, who advanced him money to the amount of its value; B. having become bankrupt, a majority of the Court of King's Bench held, that A. had no right of action against the bankers to recover the bill, because the property in exchequer bills passes by delivery (*s*). Exchequer bonds, also, are negotiable instruments.

*Bills of Exchange, Promissory Notes and other Securities.* Bills of exchange, promissory notes and other securities.  
—Where bills indorsed in blank, or promissory notes, are deposited merely by way of security, the property to them remains in the depositor, both as against the depositary and a third party with notice (*t*).

The payee of some promissory notes of the East India Company, by power of attorney, authorized his agents at Calcutta, a firm of bankers, to "sell, indorse and assign" the notes, which were transferable by indorsement and payable to bearer. The agents, in their character of bankers, borrowed money of the Bank of Bengal, offering, as a security, these promissory notes. The Bank of Bengal made the advance, the agents indorsing the notes, and purporting to make the indorsement as attorney for their principal; they deposited the notes with the Bank of Bengal by way of collateral security for their personal liability, at the same time authorizing the Bank of Bengal, in default of payment, to sell the notes, in reimbursement of their advance. The agents afterwards became insolvent, and default having been made in payment, the Bank of Bengal sold the notes and realized the amount of their loan. The indorsement of the notes by the bank was considered to be within the scope of their

(*s*) *Wookey v. Pole*, 4 B. & A. 1.

(*t*) *Goggerly v. Cuthbert*, 2 N. R. 170.

authority given them as agents of the payee by the power of attorney ; and, consequently, the payee could not recover in detinue against the Bank of Bengal (*u*).

A banker, having made advances to A., took his promissory note for 400*l.*, payable on demand, with lawful interest, as a security for the advances. The banker subsequently indorsed the note to B., as a security for money placed in his hands by B. Some time afterwards A. and the banker settled their accounts, and A. paid the balance, but neglected to ask for the note, which was not delivered up to him. Then the note passed backwards and forwards several times between the banker and B., during all which time the former was indebted to the latter in more than 400*l.*; the banker, on one of these occasions, telling B. that it must not be negotiated, as he should want it when he settled accounts with A. When this communication took place did not appear exactly, but it was before the last time the note was deposited with B.: and it was held to be decisive to show that it was not negotiated to B., but only deposited with him as a pledge. And that, therefore, B. (or his assignees on his bankruptcy) could not, after the settlement of accounts between A. and the banker without a re-delivery of the note to A., recover on it against A. (*v*).

Bills of exchange are not, as a general rule, proper subjects of mortgage, and are *primâ facie* presumed to be given in part payment as they become due (*w*).

A deposit, by way of mortgage, of a land order of the New Zealand Land Company is good, although no notice was given to the company of the deposit (*x*).

C. deposits, as security for an advance from the bank, a bond given by B. to A.; C. dies in embarrassed cir-

(*u*) *Bank of Bengal v. Macleod*, 5 Moore, Indian App. 1 ; 7 Moore, P. C. 35 ; *S. P.*, *Bank of Bengal v. Fagan*, 5 Moore, Indian App. 27 ; 7 Moore, P. C. 61.

(*v*) *Roberts v. Eden*, 1 B. & P. 398.

(*w*) *Hills v. Parker*, 14 L. T., N. S. 107.

(*x*) *Ex parte Barnett*, 1 De Gex, 203.

cumstances, after having paid A. the amount, but without B.'s knowledge; the bank may sue B. in A.'s name (y).

If a trader has securities lent to him in order that by depositing them he may get credit with the bank of A., he is not authorized, after having redeemed them from the bank of A., again to deposit them in order to obtain credit with the bank of B., although the securities had been indorsed to him (z).

When a trader deposits securities in his possession for the purpose of obtaining credit, and does so without the knowledge of the owner of the securities, he is not to be considered, if he redeems them, to have given a fraudulent preference to the owner (z).

*Bills of Lading.*—A bill of lading is a contract in writing, signed and delivered by the owner or master of a ship, whereby he acknowledges the receipt of goods and undertakes to convey them (unless prevented from so doing by the act of God, the queen's enemies, accidents of navigation or fire), and to deliver them, on payment of freight, to the person mentioned therein, or his order or assigns. So long as the goods are *in transitu*, the vendor has a right to stop them as against the vendee, in the event of the latter's insolvency (a); though the better opinion would seem to be, that *stoppage in transitu* does not rescind the contract of sale altogether (b). A vendee, however, can defeat the vendor's right of *stoppage in transitu* by negotiating the bill to a *bonâ fide* transferee for value; but, as will be seen from the next paragraph, the transferee's right to the goods will only be co-extensive with the amount of his debts (c).

(y) *Lucas v. Wilkinson*, 26 L. J., Exch. 13; 1 H. & N. 420.

(z) *Sinclair v. Wilson*, 24 L. J., Chanc. 537.

(a) *Lickbarrow v. Mason*, 1 Sm. L. Ca. 810.

(b) *Wentworth v. Outhwaite*, 10 M. & W. 451; *Ex parte Stapleton*, L. R., 10 Ch. D. 586. As to whose goods are *in transitu*, see *Bolton v. Lancashire and Yorkshire Railway Co.*, L. R., 1 C. P. 431; *Rodger v. Comptoir D'Es-compte de Paris*, L. R., 2 P. C. C. 398; *Merchant Banking Co. v. Phoenix Bessemer Steel Co.*, L. R., 5 Ch. D. 205.

(c) *Leask v. Scott*, 2 Q. B. D. 376; 46 L. J., Q. B. 576; *Ogg v. Shuter*, 1 C. P. D. 47; 45 L. J., C. P. 44; *Spalding v. Ruding*, 6 Beav. 376.

A bill of lading may be deposited by the consignee thereof as a security for an advance made to him, and such deposit will carry with it a right to the legal possession of the goods; but in the event of the insolvency of the consignee, the vendor's right of *stoppage in transitu* is not wholly gone, for he may, in equity at least, resume his interest in the goods, subject to the right of the deposittee to have his debt first satisfied; and when, with the deposit of the bill of lading, other goods belonging to the depositor are pledged, the vendor may insist upon the proceeds of such goods being appropriated, in the first instance, to the payment of the debt.

This rule was laid down in *Re Westzinthus (d)*, in which the facts were as follows:—L. and Co. who had purchased oil from W., paid for it by acceptance, and indorsed and deposited the bill of lading with H. and Co. as security for a certain advance. L. and Co. having become bankrupt, and their acceptance dishonoured, W. gave notice to the master of the ship that he claimed to stop the oil *in transitu*. At the time of L. and Co.'s bankruptcy they were indebted to H. and Co. to the amount of 9,271*l.* on account of various advances for which, in addition to the bill of lading, they held as security other goods to the value of 9,961*l.* It was held, that W. was entitled to insist upon the proceeds of L.'s own goods being appropriated to satisfy H. and Co.'s debt, and since they proved sufficient to do so, to have delivered over to him the whole proceeds of the oil.

“As *Westzinthus*,” Lord Denman said, “would have had a clear right at law to resume the possession of the goods on the insolvency of the vendee had it not been for the transfer of the property and right of possession by the indorsement of the bill of lading for a valuable consideration to Hardman, it appears to us that in a Court of Equity such transfer would be treated as a pledge or mortgage only, and *Westzinthus* would be considered as

having resumed his former interest in the goods subject to that pledge or mortgage, in analogy to the common case of a mortgage of a real estate, which is considered as a mere security, and the mortgagor as the owner of the land. We therefore think that Westzinthus by his attempted stoppage in transitu acquired a right to the goods in equity (subject to Hardman's lien thereon) as against Lapage and his assignees, who are bound by the same equities that Lapage himself was. . . . If, then, Westzinthus had an equitable right to the oil, subject to Hardman's lien thereon for his debt, he would by means of his goods have become a surety to Hardman for Lapage's debt, and would then have a clear equity to oblige Hardman to have recourse against Lapage's own goods deposited with him to pay his debt in lieu of the surety; and all the goods, both of Lapage and Westzinthus having been sold, he would have a right to insist upon the proceeds of Lapage's goods being appropriated, in the first instance, to the payment of the debt" (e).

*Factors Acts.*—Formerly a factor could not bind his principal by pledging a bill of lading, without his authority, though he might do so by selling it; but now, by 5 & 6 Vict. c. 39 (f), an agent (g) intrusted with the possession of goods, or of the documents of title to goods (h) (and *prima facie* an agent in possession is to be taken "to be intrusted"), is to be deemed the owner thereof, so far as to give validity to any contract or agreement by way of *pledge*, lien, or security *bonâ fide* made by any person with such agent so intrusted as well as for any original loan, advance, or payment made upon

(e) See also, as to this latter point, *Ex parte Alston*, L. R., 4 Ch. 168; *Corentry v. Gladstone*, L. R., 6 Eq. 44.

(f) See also 4 Geo. 4, c. 83; 6 Geo. 4, c. 94.

(g) In the two prior acts the words used were "persons intrusted," but these words have been held to mean no more than "intrusted to a factor or agent as such." See *Johnson v. Crédit Lyonnais*, L. R., 3 C. P. D. 32, 43, 48; 47 L. J., C. P. 241; 26 W. R. 195.

(h) *Vickers v. Hertz*, L. R., 2 Sc. Ap. 113, 118.

the security of such goods or documents, as also for any further or continuing advance in respect thereof, and such contract or agreement shall be binding upon and good against the owner of such goods, and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent (*i*). A wine-merchant's clerk is not an "agent" within the section, but a mere servant of his principal (*k*); nor is a warehouse-keeper who has goods deposited with him as such (*l*); but the word is restricted to those who in the ordinary course of business have power to sell or pledge goods and receive payment or advances for their principals (*m*). It is on this ground that formerly a vendor or vendee who retained possession of the documents of title to goods sold was held not an agent within the act (*n*). To remedy this, however, an act was passed, 40 & 41 Vict. c. 39, by which now vendors and vendees in possession of the documents of title to goods sold are to be deemed "agents" or "persons intrusted" within the meaning of the Factors Acts (*o*). By the same act it is enacted that no revocation of agency or entrustment shall prejudice the title of any person, who, without notice of such revocation, purchases such goods or documents, or makes advances upon the faith or security of such goods or documents (*p*).

(*i*) A woolbroker gave to a bank a letter of hypothecation on certain wools, to secure an advance, promising to lodge warehouse warrants for them next day. The bank made repeated application for the warrants, but could not obtain them. A few days afterwards, the broker having left the house, the bankers, by pressure, obtained the keys of the warehouse where the wool was stored and took possession. Part of the wool had belonged to a customer of the broker, who was, however, under advances and made no claim. *Held*, that the bank acquired a valid charge on the wool under the Factors Act, 5 & 6 Vict. c. 39, *Ex parte North Western Bank*, L. R., 15 Eq. 69; 42 L. J., Bank. 6; 21 W. R. 69.

(*k*) *Lamb v. Attenborough*, 31 L. J., Q. B. 41.

(*l*) *Cole v. N. W. Bank*, L. R., 10 C. P. 354; 44 L. J., C. P. 233.

(*m*) *Ibid.*

(*n*) *Johnson v. Lymm's Company*, ante; *Jenkyns v. Usborne*, 5 Sc., N. R. 405.

(*o*) Sect. 3.

(*p*) Sect. 2.

Formerly an agent, though otherwise within the acts, ceased to be so, if his authority had been revoked (*q*).

*Deposit of Goods*.—Generally, as to the deposit of goods Deposit of goods. by way of security, a banker is bound, at common law, to take care that the person depositing is entitled to the goods; otherwise the banker may at any time be called upon to surrender the goods, or the value of them, to their real owner (*r*); and a person, though he comes into possession of goods properly, nevertheless does not always take or retain the right to dispose of them; thus, if a person is entrusted with jewels in a bag sealed, to be kept safely for the use of the real owner, he becomes possessor *malâ fide* by breaking the seals; he has no right to the property, and he cannot transfer to the banker more right than he has himself (*s*).

A person receiving goods by way of security for an advance has, it has been held, a lien on such goods for advances made subsequently to, though not on, that security (*t*). Considerable doubt, however, exists as to the correctness of this decision (*u*), while it is clear no such right would exist as against the pledgor's creditors or subsequent purchasers (*v*).

Where a time is fixed for repayment of the advance, and default is made by the pledgor, the banker may sell the goods (*w*); and where no such time is named, the better opinion would seem to be that he may also do so, provided he first makes a formal demand on the pledgor to fulfil his engagement, and gives him notice of his intention to sell,

(*q*) *Fuentes v. Montis*, L. R., 3 C. P. 268. By sect. 5 of this act, moreover, where documents of title other than bills of lading have been lawfully endorsed or transferred by a vendee to a *bonâ fide* transferee the vendor's lien or right of stoppage *in transitu* will be defeated just as in the case of a transfer of a bill of lading.

(*r*) *Hartop v. Hoare*, 3 Atk. 44. As to the right of factors, &c., to bind their principals by pledging goods, see *ante*, p. 181.

(*s*) *Hartop v. Hoare*, 3 Atk. 44.

(*t*) *Demainbray v. Metcalfe*, 2 Vern. 691.

(*u*) See Fisher on Mortgages, p. 616, and cases there quoted.

(*v*) *Adams v. Claxton*, 6 Ves. 229; *Vanderzee v. Willis*, 3 Bro. C. C. 21; *Talbot v. Frere*, 9 Ch. D. 568.

(*w*) *Pothonier v. Dawson*, Holt, 385. See *Pigot v. Chubley*, 15 C. B., N. S. 701.

in the event of his making default (*x*). So, when the sale has taken place, any surplus that remains out of the proceeds after the pledgee has repaid himself his debt, interest and costs, must be handed over to the pledgor (*y*).

The pledgee is bound to exercise ordinary diligence and care in keeping the subject-matter of the pledge, and, so long as he does this, he is not liable for its loss or destruction, nor is he prevented from suing for the amount so secured (*z*).

Bills of sale.

When goods are mortgaged by bill of sale as security for an advance, the banker must be careful that all the requisites of the Bills of Sale Act (41 & 42 Vict. c. 31), have been complied with, or otherwise he may find that his security is not worth "the paper it is writ on." What these requisites are, and what is the result of not complying with them, will be found fully stated in a subsequent chapter (*a*).

Neither must bankers secure themselves at the expense of the creditors by a bill of sale which deprives the grantor of all his property, as the execution of such an instrument is an act of bankruptcy. As to when such an assignment will amount to an act of bankruptcy, L. J. Mellish thus summarizes the law, "The result of the authorities is, that where a debtor assigns his whole property as a security for a past debt only, it is an act of bankruptcy, whatever the motives may be. If there is also a further advance it is not a question whether the further advance is great or small, but whether there was a *bonâ fide* intention of carrying on the business" (*b*). And again, in *Ex parte King*, James, L. J., says, "In each case, looking at all the circumstances, you have to answer these questions. Does the assignment include all the property, or is there a substantial exception? Is it wholly to secure a pre-existing

(*x*) *Martin v. Read*, 11 C. B., N. S. 730; 31 L. J., C. P. 126.

(*y*) *Wilson v. Tooker*, 5 Bro. P. C. 193. See also *Attenborough v. St. Katherine's Dock Co.*, 3 C. P. D. 464; 47 L. J., C. P. 763.

(*z*) *Coggs v. Bernard*, 2 Ld. Raymond, 909; 1 Sm. L. Ca. 227.

(*a*) *Post*, Chapter on Bills of Sale.

(*b*) *Ex parte Ellis*, 2 Ch. D. 798; 45 L. J., Bank. 159.

debt, and if there is a further advance, is it a substantial one, or only one intended to give colour to a security which is in reality made only for the purpose of securing a pre-existing debt? These are questions of fact, and the answers given depend on the circumstances”(c).

A document stating goods to have been deposited as a security for the repayment of money lent, and containing a power of sale in default of payment, does not require to be stamped as a mortgage deed (d).

*Ships.*—By the Merchant Shipping Act, 1854 (e), a registered ship, or any share therein, may be made security for a loan by way of mortgage in two ways: (1) by a direct mortgage with registration; (2) by a mortgage under a mortgage certificate.

(1.) The mortgage must be in the form marked I. in the schedule to the act, or as near thereto as circumstances will permit, and on its production the registrar of the port where the ship is registered shall record the same in the register books (f). The mortgages are registered in the order of time of their production (g), and where there is more than one mortgage registered of the same ship or shares therein, the mortgagees shall, notwithstanding any express, implied or constructive notice be entitled in priority one over the other, according to the date at which each instrument is recorded in the register books, and not according to the date of each instrument itself (h). It has been held, however, that as against the mortgagor himself registration is not necessary (i).

(c) *Ex parte Ellis*, 2 Ch. D. 798. See also *Lomax v. Buxton*, L. R., 6 C. P. 107; *Jones v. Harber*, L. R., 6 Q. B. 77; *Philps v. Hornstedt*, 1 Ex. D. 62; *Ex parte Fisher*, L. R., 7 Ch. 636; *Harrison v. Cohen*, 32 L. T. 717; *Ex parte Payne*, 11 Ch. D. 539; 40 L. T. 296; 27 W. R. 368.

(d) *Attenborough v. Commissioners of Inland Revenue, In re Wright*, 11 Exch. 461; 25 L. J., Exch. 22.

(e) 17 & 18 Vict. c. 104.

(f) Sect. 66.

(g) Sect. 67.

(h) Sect. 68.

(i) *Lister v. Payne*, 11 Sim. 348.

And an unregistered mortgage will pass the ownership of a ship to the mortgagee even as against an equitable assignee of the freight, at all events in the absence of fraud, or of such gross and wilful negligence as is equivalent to fraud, and provided the mortgagee has taken possession (*k*). The only effect of not registering the mortgage is to postpone the claim of the mortgagee to that of a subsequent mortgagee who has registered (*l*). A mortgagee who has taken possession becomes entitled to the accruing freight (*m*), and to use or sell the ship (*n*). And upon taking possession he becomes an owner within the Merchant Shipping Act (17 & 18 Vict. c. 104), and subject to all the liabilities consequent thereon (*o*). The rights of a registered mortgage are not affected by any act of bankruptcy committed by the mortgagor after the date of the record of the mortgage; and the mortgaged property is not considered as being in the apparent ownership of the bankrupt within the meaning of the Bankruptcy Act, and the mortgagee will be preferred to the trustee in bankruptcy (*p*).

(2.) A mortgage certificate is a power given to the owner of a ship or share therein by the registrar enabling him to mortgage such ship or share (*q*).

Certificates of mortgage must be in the forms contained in the schedule to the act, and contain a statement of the several particulars mentioned in sect. 77, and in addition thereto an enumeration of any registered mortgages or certificates of mortgage affecting the ships or shares in respect of which such certificates are given (*r*).

Every mortgage which is so registered shall have a

(*k*) *Keith v. Burrows*, 1 C. P. D. 722; 2 C. P. D. 160; 2 App. Cas. 636; 46 L. J., C. P. 801.

(*l*) *Ibid.*, 2 C. P. D. 163.

(*m*) *Wilson v. Wilson*, L. R., 14 Eq. 32; *Keith v. Burrows*, *supra*; *Brown v. Tanner*, L. R., 5 Ch. 597.

(*n*) *De Mattos v. Gibson*, 1 Jo. & H. 79.

(*o*) *Ibid.*

(*p*) Sect. 72.

(*q*) Sect. 76.

(*r*) Sect. 79.

priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book; and if there be more mortgages than are so indorsed, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied or constructive notice be entitled one before the other according to the date at which a record of each instrument is indorsed on the certificate (*s*).

By 25 & 26 Vict. c. 63, s. 3, equities may be enforced against owners and mortgagees of ships in respect of their interest therein in the same manner as equities may be enforced against them in respect of any other personal property (*t*).

So an owner of a ship executing an absolute transfer of his interest therein is not precluded from showing that the legal intention was to give the transferee only a security by way of mortgage (*u*). Equitable mortgages of ships are, therefore, valid without registration, as against all persons except registered transferees and mortgagees (*v*). The deposit of a builder's certificate of an unfurnished ship by way of security creates an equitable mortgage (*x*), as also does the deposit of a registered mortgage (*y*). In the case of a mortgage of a ship or cargo notice should be given to the master or consignee (*z*).

Mortgages of future freight or of cargo to be acquired during a voyage may be made (*a*), but notice should be sent to the master (*b*).

As there is no doubt that a person may give an effectual security upon property of his at sea, before it has come to

(*s*) Sect. 80.

(*t*) *Union Bank of London v. Lenanton*, 3 C. P. D. 243; 47 L. J., C. P. 409.

(*u*) *Ward v. Peck*, 13 C. B., N. S. 668; 32 L. J., C. P. 113; see also *The Cathcart*, L. R., 1 Eq. 314.

(*v*) *Stapleton v. Hayman*, 2 H. & C. 918; 33 L. J., Ex. 17.

(*x*) *Ex parte Hodgkins*, L. R., 20 Eq. 746.

(*y*) *Lacon v. Liffen*, 32 L. J., Ch. 25.

(*z*) *Langton v. Horton*, 1 Hare, 549.

(*a*) *Gardner v. Lachlan*, 4 M. & C. 129; *Leslie v. Guthrie*, 1 Scott, 683.

(*b*) *Layton v. Horton*, 1 Hare, 549.

hand, so he may also pledge a policy of marine insurance with another person or with bankers, and they, if due notice has been given to the underwriters or insurance company, will be entitled to receive the principal sum insured, upon the event insured against happening.

On change of firm.

*On Change of Firm.*—The question may frequently arise, in practical banking, as to the effect of a change of firm upon a security deposited with the bank before the alteration. The following case will tend to explain the position of the bank in such circumstances:—

A. deposited with a bank, by way of security for advances, a joint and several promissory note, made payable to order on demand with interest, whereby A. and B. promised to pay on demand Pease and others and R. H., or order, 300*l.*, with interest. A. paid interest regularly. At one time he had a balance in the bankers' hands exceeding the amount of the note. After the note was deposited the firm changed; the Court held—

1. The note being a continuing security, inasmuch as it was made payable to order, might be indorsed, notwithstanding the change in the banking firm.

2. The note not having been indorsed, the original payees, being a partnership, or the survivors of them, were the proper parties to sue upon it.

3. The note was not discharged, by the fact of A.'s having, at one time, since the deposit of it, in the bankers' hands, a balance exceeding its amount (*c*).

Whenever, therefore, bankers take a security of this kind, it is indispensable for their security, either that they indorse the note within the six years from its date, or that they put it in suit within that time, or that they take care that the interest is regularly paid upon it, in order to make it effectual as a security, and guard themselves against loss.

<sup>a</sup> (*c*) *Pease v. Hirst*, 10 B. & C. 122. See *Hartland v. Jukes*, 1 H. & C. 667.

A customer deposited the title deeds of a copyhold estate with his bankers, the deposit being agreed to be as a security, not only for a sum already advanced by the bankers to him, but also for any other sums of money which might be afterwards advanced by the firm. Afterwards, one of the firm died, and another person was afterwards added to the firm, every thing else remaining the same as before in the relations of the customer to the firm. About six years elapsed, when a *fiat* in bankruptcy issued against the depositor, and it became a question whether the deposit enured to the benefit of the new firm:—it was held that it did so; for the circumstances amounted to a tacit acknowledgment, that the deeds were deposited with the new firm on the same terms as they had been with the old one (*d*). It may, probably, now be laid down with confidence, that the continuance of the same modes of dealing with the new firm as with the old, and the continuance of the deposit in the hands of the new firm, will be construed into a tacit recognition by the depositor, that the new hold the deeds for the like object and purpose as the old one did, and stand in the same relation to him. Nevertheless, in practice, it is desirable for bankers, in order to avoid all questions, as to whether a sufficient period has elapsed to enable the Court to say that the intention of the depositor was clearly manifested, and to make it quite certain that he was aware of the change, &c., to have a fresh memorandum of deposit made, in order to secure the new firm.

Two traders, in partnership, having had for many years an account with a bank, deposited with them certain title deeds of an estate belonging to one of the partners separately, as a security for the balance which might be due to the bank from the firm, from time to time, upon the account current. No written memorandum was at that time

(*d*) *Ex parte Kensington*, 2 Ves. & B. 79, 83; *Ex parte Oakes*, 2 M., D. & De G. 234; *Ex parte Smith*, 2 M., D. & De G. 314. See 19 & 20 Vict. c. 97, s. 4.

made of the object of the deposit; but afterwards, upon a further advance by the bank, the owner of the title deeds signed a letter or memorandum stating the deposit to be for securing that as well as future advances. The banking firm had undergone some changes in its members after the deposit was made, and, in point of fact, all the advances made by the banking firm with whom the deposit was made had been paid off by the traders; but fresh advances were made by the new banking firm, who continued to hold the deeds: it was, nevertheless, held that the security was a continuing security, and that the banking firm was equitable mortgagee of the estate to the amount of their advances (*e*).

*Release and Return of Securities.*—Where a mortgage is made to several persons jointly they are in equity considered as tenants in common of the mortgage money, and in case of the death of any one of them before the debt is paid off the survivors cannot give a good discharge for the debt without the concurrence of the representative of the deceased (*f*).

A banker holding securities, which have been deposited with him by way of equitable mortgage, must deliver up the securities upon being paid the amount covered by the deposit (*g*).

(*e*) *Ex parte Smith*, 2 M., D. & De G. 314.

(*f*) *Vickers v. Cowell*, 1 Beav. 529; overruling *Brasier v. Hudson*, 9 Sim. 1.

(*g*) *Ex parte Adair, In re Gross*, 24 L. T., N. S. 198.

## CHAPTER XX.

## DEPOSIT OF SECURITIES FOR SAFE CUSTODY.

It is the custom of bankers to receive and to keep for the accommodation and convenience of their customers boxes of plate, jewels, wills, deeds and securities, and as no charge is ever made for their custody, they are gratuitous deposits; the bankers, therefore, are only bound to take ordinary care of them, and if they are stolen by a clerk or servant, employed about the bank, the bankers will not be responsible, unless they have knowingly hired or retained in their service a dishonest servant. Securities are also deposited with the bankers for the collection of the dividends or interest payable upon them, for which sometimes they charge a commission. But whether the bankers receive any consideration or not, or whether they are gratuitous bailees or bailees for reward, the test of their liability in the case of the loss of securities entrusted to their charge will be, have they exercised that degree of ordinary diligence which men of common prudence generally exercise about their affairs (a).

The following decisions illustrate the extent and measure of their liability:—

In an action for damages against bankers as bailees for the negligent keeping of some railway debentures placed

(a) Addison on Contracts, p. 632, 7th edit. A gratuitous bailee, in *Coggs v. Barnard*, and other old cases, was said to be liable only for *gross negligence*. If gross negligence means "greater negligence than the absence of ordinary care implies, and is such a degree of negligence as excludes the loosest degree of care, and which almost amounts to fraud," as defined by Erle, C. J., in *Chashill v. Wright* (6 E. & B. 899), these cases undoubtedly conflict with the above statement of the law, and the degree of care to be used by a gratuitous bailee, and one for reward would not be the same. Whatever is meant by the word "gross," the present editor submits that a less amount of care is due from a gratuitous bailee, than from a bailee for hire.

in their care by a customer, in the ordinary way of their business as bankers, it appeared that the box containing such securities (of which the customer retained the key) was kept in a strong room in the bank, with the boxes of other customers, and specie and other securities belonging to the bank. Access to this room was only obtained by passing through a compartment where a cashier sat by day, and a messenger slept at night. The strong room had two iron doors, which were opened by separate keys, which during the day were kept by the cashier who occupied the compartment. One of the keys was kept at night by the cashier of the bank, and the other key by another officer of the bank. Beyond this strong room there were two other rooms, in the outer of the two uncoined gold, and in the inner bullion and unsigned notes were kept. The manager of the bank kept the key of the outer of these rooms, and one of the directors of the bank that of the inner. The owner of the box had free access to the room where his box was deposited during banking hours, in the presence of one of the bank clerks, when he had occasion to take out coupons from his debentures, for collection. While in such custody the cashier of the bank abstracted the debentures from the box, and made away with them. The Privy Council held, that the bankers, as gratuitous bailees, were not bound to exercise more than ordinary care of the deposits entrusted to them, and the negligence for which alone they would be made liable would have been, the want of that ordinary diligence which a reasonably prudent man takes of his own property of the like description. And that, consequently, there was no negligence to render the bank liable for the loss of the securities in question (*b*).

In a subsequent case it appeared that the owner of railway shares in two companies deposited the certificates for safe custody with a banking company, who undertook

(*b*) *Giblin v. McMullen*, L. R., 2 P. C. 317; 38 L. J., P. C. 25; and see note (*a*) on p. 191.

to receive the dividends for a small commission. On receiving the certificates from the companies, he gave his address in one instance at the office of the bank, and in the other at a club. The manager of the bank, who had the key of the safe where the certificates were kept, fraudulently sold the shares, and forged the name of the owner to the transfer. The companies wrote to him informing him of the transfers, and receiving, in one instance, no answer, and in another an answer in his name, forged by the manager, registered the transfer. He afterwards, on discovery of the fraud, instituted suits against the two companies and the transferees of the shares, in which he recovered the shares, but the Court gave him no costs. On the banking company being wound up, he claimed to prove against the company for the amount of his costs in the suits which had been occasioned by their negligence; but the Court held, that the banking company was a bailee for reward of the certificates, and that it had been guilty of culpable negligence in keeping them by allowing the manager uncontrolled access to the safe, but that the loss of the costs was too remote a consequence of the negligence of the company for them to be held liable for it (c).

A lady deposited with her bankers at Carlisle, for safe custody, East India bills, specially indorsed to them by

(c) *In re United Service Company, Ex parte Johnston*, L. R., 6 Ch. 212; 40 L. J., Chanc. 286, Lord Justice James, in delivering judgment, said:—"Now it is not every loss which follows the negligence of a bailee which can be charged against the bailee. If these costs had been the costs of a simple detainee, brought for the recovery of possession of these documents, it may possibly be that the bank would have been liable for them. But these suits are for the rectification of the registers of the railway companies, so as to restore the rightful owner to those registers, and enable him to receive the dividends. Now the *causa causans* which rendered these suits necessary was the forgery. The possession of the certificates no doubt facilitated the forgery, and was one of the means by which it was carried into effect; but the consequence of the forgery was hardly one against which the bailor could be held to have been warranted by the bailee. The case may be tested by analogy. Suppose a key to be in the possession of a bailee, and to be lost by him, so that a burglar obtains possession of it, who steals property to which the key was the means of access, it could hardly be said that the bailee would be responsible for the whole loss thus sustained. So here it can hardly be said that the chancery suits were the necessary consequence of the negligence by which the certificates were lost."

her, with instructions to receive the amount when due. These bills are not negotiable in the market, like common bills of exchange, and would, therefore, in the ordinary course, have been only deposited with her bankers for greater security. The balance of her account, exclusive of the amount of the bills, was in her favour, and continued so up to the bankruptcy of the bankers. They charged discount on the bills in their account with her, and she might have drawn on them for their amount; it being the custom of the bankers of Carlisle to consider ordinary bills so deposited, as cash. The bankers paid away the bills to a creditor, with whom the assignees afterwards settled an account, charging him with the amount of the bills, and receiving from him the balance due to the estate. Held, that the bankers had acted in violation of the directions under which the bills were deposited, and that the customer was entitled to be reimbursed the whole amount of the bills from the assignees (*d*). It would not have made any difference if the account had been overdrawn at the time the bankers disposed of the bills, because when bills are remitted to a person for a specific purpose, he is bound to perform that purpose, or return the securities; if he receives the amount contrary to the directions of the remitter, he cannot apply it to the payment of his own debt; consequently, if the account had been overdrawn, it would not have been an excuse for the bankers to say, they had sold or discounted the bills, or paid them away, and carried the amount to the customer's account, and applied it in reduction of her debt to them (*e*).

The criminal liability attaching to bankers, disposing of or misappropriating securities entrusted to their care, is treated in a subsequent chapter (*f*).

(*d*) *Ex parte Bond*, 1 M., D. & De G. 10.

(*e*) *Ibid.*; *Ex parte Brown*, 3 Deac. 91, which case also recognizes the principle that bills remitted, clothed with a trust, do not pass to the assignees on the bankruptcy of the recipients.

(*f*) *Post*, Chapter on CRIMINAL LIABILITY OF BANKERS.

## CHAPTER XXI.

## THE CUSTOMER'S PASS BOOK AND ACCOUNT.

THE course of banking business in London makes the Pass book. only general mode of stating and adjusting accounts between bankers and their customers, residing in or near the metropolis, to be as follows:—

A book, called a *pass book*, is delivered by the bankers to the customer, in which at the head of the first page, and there only, the bankers by the name of their firm are described as the debtor, and the customer as the creditor in the account; on the debtor side are entered all sums paid to or received by the bankers on account of the customer, and on the credit side all sums paid to him or on his account, and these entries being summed up at the bottom of each page, the amount of each, or the balance between them, is carried over to the next folio without further mention of the names of the parties, until the book being full, it becomes necessary to deliver a fresh one to the customer. For the purpose of having the book made up by the bankers from their own books of account, the customer returns it to them from time to time; and, the proper entries being made by them up to the day on which it is left for that purpose, they hand it again to the customer, who thereupon may examine it, and if there appears any error or omission it is his business to send it back to be rectified; if he does not, his silence is regarded as an admission that the entries are correct: but no other settlement, statement or delivery of accounts, or any other transaction which can be regarded as the closing of an old, or the opening of a new, account, or as varying, renewing or confirming (in respect of the persons or the parties mutually dealing) the credit given on either side, takes place in the ordinary course of business,

unless when the name or firm of one of the parties is altered, and a new account thereupon opened in the new name or firm.

The course of business is the same between such bankers and their customers resident at a distance from the metropolis, except that, to avoid the inconveniences of sending and returning the pass book, accounts are from time to time made out by the bankers, and transmitted to the customer in the country, when required by him, containing the same entries as are made in the pass book, but with the names of the parties debtor and creditor at the head, and with the balance struck at the foot of each account, and his silence is regarded as a tacit admission that the entries are correct (*a*).

H. and C., being partners in business, were indebted to their banker in 979*l*. In 1851, the banker, with the consent of H. (C. living at a distance), transferred his business to the Midland Banking Company, including the account in question. The partnership account of H. and C. commenced with this item of 979*l*. in the Midland Bank books, but whilst it was open H. paid in moneys to an amount exceeding 979*l*. A pass book was regularly sent to H. In 1852, the Midland Bank gave notice to the banker that they would not take to this account, there being in the deed transferring the business a proviso, that, at the expiration of twelve months as to such accounts as should not be taken to by the Midland Bank, they should, during a period not exceeding ten years, either accept or compel payment, or permit the same to remain due.

An action was afterwards brought by the Midland Bank against H. and C. to recover the balance due. But the Court held the debt of 979*l*. to be extinguished by the payment subsequently made by H. to the credit of the partnership account, and the assent to the appropriation to be inferred from his not objecting to the pass book, and

(*a*) See the custom of dealing, as found by the master in *Devaynes v. Noble*, 1 Meriv. 535, 536.

that after such extinguishment as between the Midland Bank and the partnership this account could not be treated as an existing debt remaining due (*b*).

A change of the title of a firm in a pass book, and entries therein to the credit of a new firm of the interest of securities given by the customer to the original firm, is notice of the assignment to the new firm of the securities given by the customer to the old firm (*c*).

The pass book between a bank and a joint stock company is a good source of evidence, to show that the bank paid to the company calls due from A.; one of the plaintiffs (the banking partnership) being treasurer of the company and A. a subscriber (*d*).

Credit given in a pass book binds the bankers, if on the faith of such credit the customer has altered his position, as by drawing on the fund, &c.; for, by entering the sums to the customer's credit, they lead him to suppose that they have received them on his account; where, however, there has been no such alteration the banker is allowed to show that the entries were made by mistake (*e*), for the pass book is only *prima facie* evidence against him (*f*).

But this is subject to the proviso, that the entries in the pass book are properly made on each side of it; a pass book, with entries on one side only, is not evidence of a settled account between the banker and the customer, although the book is kept by the customer, without objection to the entries (*g*).

If an entry is alleged to have been made by mistake in the wrong place in a pass book by the banker's clerk, but

(*b*) *Beale v. Caddick*, 2 H. & N. 326.

(*c*) *Cavendish v. Geaves*, 24 Beav. 163; 27 L. J., Chanc. 314.

(*d*) *Alexander v. Barker*, 2 C. & J. 135. But a pass book is not evidence that a given person was a provisional director of an abandoned company; 16 C. B. 671.

(*e*) *Shaw v. Picton*, 4 B. & C. 715; *Shaw v. Dartnall*, 6 B. & C. 57; *Heane v. Rogers*, 9 B. & C. 586; *Hume v. Bolland*, 1 C. & M. 130; *Skyring v. Greenwood*, 4 B. & C. 281.

(*f*) *Commercial Bank of Scotland v. Rhind*, 1 Macq. H. L. Cas. 643.

(*g*) *Ex parte Randleston*, 2 Deac. & C. 534; see *Boardman v. Jackson*, 2 Ball & B. 382.

by the customer denied to be any mistake, the question is for the jury upon the evidence (*h*).

Making a false entry in what purports to be a pass book, with intent to defraud, is a forgery of an accountable receipt (*i*).

Mode of  
keeping ac-  
count.

When accounts between banker and customer have been carried on for a series of years on a particular footing, it will be presumed that there was originally an agreement to that effect, but acquiescence will not amount to a settlement of account (*k*). When a banker discounts the bills of his customer, his account being overdrawn, and the amount of the discounts is simply carried to the credit of his account, the banker is the holder for value, though no money has actually passed (*l*).

Debiting ac-  
count with  
costs of ac-  
tion.

Bankers cannot debit a customer's account with the costs of actions brought by them on bills discounted for the customer, unless at his request, or with his consent (*m*).

(*h*) *Snead v. Williams*, 9 L. T., N. S., Exch. 115.

(*i*) *Reg. v. Smith*, L. & C. 168; *Reg. v. Moody*, *ib.* 173; 24 & 25 Vict. c. 98, s. 23.

(*k*) *Mosse v. Salt*, 32 Beav. 269; 32 L. J., Chanc. 756.

(*l*) *In re Carew*, 31 Beav. 39.

(*m*) This was decided by Baron Martin, in a case of *Holl v. The Mercantile and Exchange Bank (Limited)*, tried before him and a special jury, in the sittings after Michaelmas term, November 27, 1865. It was an action to recover compensation in damages against the defendants for not having paid the amount of one of the plaintiff's cheques. The defendants admitted the usual contract between banker and customer, but said they had not sufficient money belonging to the plaintiff in their hands applicable to the payment of the cheque. The plaintiff, Mr. William Holl, who carried on business in Mincing-lane, had kept a drawing account at the bank of the defendants, and in August, 1864, they discounted for him a bill for 99l. 15s., of which he was the drawer, and Messrs. Robertson & Ward were the acceptors. This bill became due in November following, and was dishonoured. Some negotiations then took place between the plaintiff and the manager of the bank, the result of which was that the defendants' solicitors, Messrs. Cotterell, issued a writ against the acceptors. Ultimately the plaintiff made provision for the bill, but a dispute arose as to whether he ought to pay 2l. 3s. 10d., the costs of Messrs. Cotterell. The defendants claimed that sum, and debited his account with it, and the question now was, whether they had a right to do so. It was admitted that if they had they were justified in refusing to honour the cheque. For the defence it was stated that the plaintiff's account with the bank was opened in April, 1864, and closed in November following; that it was overdrawn as many as thirty-seven times during that period; that complaints had been frequently made to him about the account, and that he had been repeatedly asked to with-

When a banking company has branches in different localities, and a customer has an account at more than one branch, there is no duty on the company to keep the accounts distinct, so as to bind it to honour cheques at a branch where the customer has a balance in his favour, if, on a general settlement of account, the balance is against him, although it is the custom of the company so far to keep the accounts separately as to refuse to honour his cheques, except at the particular branch where the customer has a balance in his favour. And there is no legal obligation on a banker to give notice to his customer that he intends to transfer a balance against the customer from an account at one branch to an account at another branch (*n*).

Accounts at several branches.

Where bankers have for a long course of time charged their customer interest with annual rests he is by his acquiescence taken to have consented to that mode of keeping his account (*o*).

Charging account with interest and commission.

When the account between a banker and his customer is kept at compound interest, and the customer dies, the final balance at his death, in the absence of any agreement to the contrary, carries no interest (*p*). So when the

draw it. It was also said that he called at the bank, and asked the manager to sue the acceptors upon the bill in question; and that on a subsequent occasion he had been told that the solicitors' costs would be debited to his account. The manager, who was called, admitted that when he gave this intimation to the plaintiff, the plaintiff did not say he would consent to such a course; but he (the manager) said it was the usual practice amongst bankers to debit a customer's account with costs incurred under similar circumstances. Baron Martin said it was a practice which ought to be stopped. A bank had no right to debit a man's account with a charge of this kind against his will. The witness added that the bank had not actually put the money in the hands of Messrs. Cotterell, but had placed it to the credit of their account with the bank. On the part of the defendants, it was submitted that the plaintiff had sustained no real damage by the refusal to pay the cheque, and that a farthing damages would be sufficient to meet the justice of the case. On the other hand, it was contended that the credit of the plaintiff had been seriously injured, and commented severely on the conduct of the defendants in vindictively bringing before the public the state of his account with them. The jury found a verdict for the plaintiff—damages, 5*l*.

(*n*) *Garnett v. M'Kewan*, L. R., 8 Exch. 14; 42 L. J., Exch. 1; *Prince v. Oriental Bank*, L. R., 3 App. Ca. 325; 47 L. J., P. C. 42.

(*o*) *Crosskill v. Bower*, 32 Beav. 86; 32 L. J., Chanc. 540.

(*p*) *Ibid*.

balance is in the favour of the customer, and the banker dies, or ceases to carry on business, or becomes bankrupt (*p*).

When a mortgage security is given by a customer to his bankers for a fixed sum, and not in respect of a running balance, the banker is not entitled to include that sum in the banking account, and charge compound interest (*q*). Bankers having a mortgage security and a banking account with their customer, in ascertaining the amount due between them, the accounts must in the first instance be taken separately, and on different principles (*q*).

A customer being indebted to his bankers upon an account current, upon which compound interest had according to custom been charged by the bankers, executed a mortgage to them, to secure the amount of the current account. The customer afterwards executed a creditors' deed of which the bankers were appointed the trustees, and from that time he ceased to draw upon or pay money into the account: it was held, that the bankers were only entitled to simple interest from the date of the deed upon the balance due (*r*).

A banking account which was largely overdrawn, was for the half-year ending June, 1867, charged with interest at 5*l.* per cent., and with a gross sum of 500*l.* for commission, in lieu of the charge of one-half per cent. previously made. The pass book balanced on this footing was sent to the customer, and the charges were explained to his agent (the customer himself being in weak health, and unable to attend to business matters). The customer, who died in December, 1867, had not raised any objection to these charges. Now as the charge of 500*l.* for commission

(*p*) *Crosskill v. Bower*, 32 Beav. 86; 32 L. J., Chanc. 540.

(*q*) *Mosse v. Salt*, 32 Beav. 269; 32 L. J., Chanc. 756.

(*r*) *Crosskill v. Bower*, 32 Beav. 269; 32 L. J., Chanc. 540. It is the custom amongst bankers, finance companies, and others who lend money or stock for railway deposits, and execute treasury bonds, that in the case of a deposit of stock an annual commission is charged, in addition to the dividends accruing thereon; and in the case of a bond, a premium is paid to the bondsman, either in one sum, or in the form of an annual payment. *Anon.*, 18 W. R. 996.

had been acquiesced in, it was valid for the half-year ending June, 1867, but acquiescence could not be inferred for subsequent half-years, there being nothing in the entry for the particular half-year that amounted to a contract to the same effect in futuro (*s*). The right of the bank to charge compound interest terminated with the death of the customer; and from that period simple interest only at 5*l*. per cent. was chargeable on the account (*s*).

Though in discounting bills and making loans for short periods bankers do not usually deduct income tax, yet in a mortgage transaction with their customers they are bound to allow income tax (*t*). Deduction of income tax.

The liability of bankers on dishonouring the cheques of their customers is treated in a previous chapter (*u*).

(*s*) *Williamson v. Williamson*, L. R., 7 Eq. 542.

(*t*) *Mosse v. Salt*, 32 Beav. 269; 32 L. J., Chanc. 756.

(*u*) *Ante*, p. 15.

## CHAPTER XXII.

## GUARANTIES TO SECURE ADVANCES.

**How made.** By the Statute of Frauds (29 Chas. II. c. 3, s. 4), it is enacted that no action shall be brought whereby to charge a defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized (*a*). Consequently, no action can be brought against a surety unless his guarantee, or some note or memorandum thereof, is in writing signed by himself, or his lawfully-authorized agent. The signature should be so affixed as to govern and give authority to every material portion of the agreement (*b*). The appointment of the agent need not be in writing (*c*). The guarantee, if under seal, need not be supported by a consideration, but if not, like every other simple contract, it must be (*d*). Previous to 19 & 20 Vict. c. 97, s. 3, this consideration had to be expressed on the face of the guarantee, but since that act this is no longer required.

**On change of firm.**

*On Change of Firm.*—Even before the presently to be stated act a guarantie, given by a person to secure a banking copartnership, consisting of several members, all and every sums or sum of money which might become due to them from a certain customer for money advanced to him

(*a*) A similar enactment exists in Scotland, 19 & 20 Vict. c. 60, s. 6.

(*b*) *Caton v. Caton*, L. R., 2 H. L. 127.

(*c*) *Rossiter v. Miller*, L. R., 3 App. Cas. 1124.

(*d*) *Harris v. Venables*, L. R., 7 Ex. 256; *Wynne v. Hughes*, 21 W. R. 628, Ex.

upon any bills, &c., made payable at the banking house of the copartnership, does not bind the obligor, after the death of one of the partners, nor cover future advances made after such death and the taking in of another partner; and the customer, who, at the time of the death, was indebted to the house, having afterwards paid off the balance incurred previously to the death, the obligor was wholly discharged (*e*).

There is no doubt, however, that a guarantie might have been drawn in such terms as to serve as a continuing indemnity to the house, whatever might be the change of partners, if such intention appeared from the language used (*f*). The Courts, both of equity (*g*) and common law (*h*), appear to lean against increasing the liability of a guarantor to a banking firm in this respect. This principle of construction, narrowing the liability of a surety when the advances to be secured are to be made to a firm, arises quite as strongly from the nature of the transaction itself; for it is obviously an assumption to conclude that a party guarantees advances to A. and B., because he is willing to guarantee advances to A., B. and C.

And since the decisions, which established this principle, the Legislature appears to have ratified and confirmed it, by enacting as follows (*i*):—

“No promise to answer for the debt, default or miscarriage of another made to a firm, consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default, or miscarriage of a firm, consisting of two or more persons, or of a single person, trading under the name of a firm, shall be binding on the person making such promise in respect of anything done or omitted to be done, after a change shall have taken place in any one or more of the

(*e*) *Strange v. Lee*, 3 East, 484; *S. P.*, *Weston v. Barton*, 4 Taunt. 67.

(*f*) See form in *Earle v. Oliver*, 2 Exch. 71, 72.

(*g*) *Pemberton v. Oakes*, 4 Russ. 154.

(*h*) *Chapman v. Beckington*, 3 Q. B. 703.

(*i*) 19 & 20 Vict. c. 97, s. 4.

persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties, that such promise shall continue to be binding notwithstanding such change, shall appear either by express stipulation, or by necessary implication, from the nature of the firm or otherwise."

Since this statute, therefore, guaranties may either expressly stipulate for the continuance of the undertaking, (when the intention is that it should continue,) notwithstanding changes in the firm; or if the parties choose to take upon themselves the risk of determining that the firm is of such a nature as necessarily to imply the continuance of the guarantie, notwithstanding the change, they may do so, and need not insert an express provision to that effect; and so they need not insert an express provision, if they choose to incur the risk of proving *aliunde* this to have been the intention; but it is manifestly the safe and most convenient course in all cases to insert an express stipulation for the continuance of the instrument, notwithstanding any change in the constitution of the firm.

Continuing  
guarantee as  
to amount  
and time.

*Continuing Guarantee as to Amount and Time.*—Whether the liability of a surety is or is not a continuing one as to amount, (that is to say, whether it is limited to a particular debt, or extending to a series of debts,) or time, or both, is simply a question of construction, and is to be gathered from the instrument containing the guarantie or the circumstances of each particular case. In *Coles v. Pack* (i), the following words were held to constitute a continuing guarantie as regards both amount and time. "Now I do hereby, in consideration of your forbearing to take immediate steps for the recovery of the said sum, guarantee payment of and agree to become responsible for any sum of money for the time being due from F. to you, whether in addition to the said sum or not."

(i) L. R., 5 C. P. 65.

So, where a father gave his son a promissory note for 2,000*l.*, which was indorsed by the son, and discounted by a banking company, who took from the father an agreement under seal, that in consideration of its discounting the note, certain deeds of the father's deposited at the same time should remain a security for all money due or to become due from the son to the company on any account whatsoever, and at the date of the agreement the son owed the company 3,000*l.* upon a running account, and the amount was subsequently increased to 5,000*l.*, the agreement was considered to be a continuing guarantie, and the bank was held to be entitled to prove against the father's estate, not only for the 2,000*l.*, the amount of the note, but for all sums due to them from the son (*k*).

A debtor and his surety executed a joint and several bond for 14,000*l.* conditioned for avoidance if they or either of them should in satisfaction of the debt of 7,000*l.* then due from the debtor to the obligee pay the 7,000*l.*, with a proviso that the surety should not be liable under the bond for a sum or sums exceeding altogether in debt or damages 1,300*l.* The debtor having paid 1,000*l.*, part of the debt, and then filed a petition for liquidation, the obligee proved for and received a dividend of 9*s.* 2*d.* in the pound on 6,000*l.* under the liquidation. After deducting from the 7,000*l.* the 1,000*l.* and the dividend, there remained more than 1,300*l.* due. The obligee having brought an action on the bond against the surety to recover 1,300*l.*, the surety contended that he was entitled to deduct from the 1,300*l.* a rateable proportion of the dividend, viz., 9*s.* 2*d.* in the pound on 1,300*l.*, and was only liable for the balance:—Held, that the intention of the bond was that the surety should guarantee the whole 7,000*l.*, though his liability was limited to 1,300*l.*; that he was, therefore, not entitled to deduct a rateable proportion of the dividend, but was liable for the whole 1,300*l.* And in

(*k*) *Burgess v. Eve*, 41 L. J., Chanc. 515; L. R., 13 Eq. 450.

the same case it was laid down that when a surety gives a continuing guarantie, limited in amount, to secure the floating balance which may from time to time be due from the principal to the creditor, the guarantie is, as between the surety and the creditor, to be construed (*primâ facie* at least) as applicable to a part only of the debt co-extensive with the amount of the guarantie. But a guarantie limited in amount for a debt already ascertained, which exceeds that limit, is not *primâ facie* to be construed as a security for part of the debt only (1).

A surety bound himself jointly to a banking company in 500*l.*, the condition of the bond being that if the obligors should from time to time pay all and every such sum or sums of money as should become due to the bank for money advanced to surety's co-obligor, and pay interest at 5*l.* per cent. per annum for such sum or sums of money as aforesaid, to be computed as is usual with the banking company in ordinary banking accounts with them, and also the lawful commission, charges or expenses incident to, or occasioned by, the transactions or matters between the bank and the co-obligor, and should indemnify and save harmless the banking company from all actions, suits and expenses, and all liability whatsoever, by reason of the transactions and matters, then the bond was to be void; provided that the principal moneys to be ultimately recovered on the bond were thereby limited not to exceed 250*l.*, and that the obligors or any of them should not be liable to pay, by virtue thereof, any greater principal sum than 250*l.*; but that the bond should be a continuing security to that amount, for the sums from time to time owing as aforesaid, exclusive of interest (to be computed as aforesaid), commission, cost, charges and expenses; held, that the surety was liable on this bond only for 250*l.* principal moneys advanced, and interest accrued

(1) *Ellis v. Emmanuel*, 1 Ex. D. 157; 46 L. J., Ex. 25; 34 L. T. 553; 24 W. R. 832. See also *Ex parte Midland Banking Co.*, 38 L. T. 395; *Morrell v. Cowan*, 7 Ch. D. 151; *Hessfield v. Meadows*, L. R., 3 C. P. 595; *Wood v. Priestner*, L. R., 2 Ex. 66, 282.

upon that sum; but not for any further principal sum advanced by the bank (*m*).

It would appear that where there is a continuing Revocation. guarantie for advances from time to time to be made to another person, the guarantie can be determined by the guarantor at any time, subject to the payment of anything then due under it (*n*). Thus a guarantie for the space of twelve months for the due payment of all such bills as A. might discount for D. & Co., to the extent of 600*l.*, may be revoked and countermanded by a notice given during the twelve months, although some discount may have been made and repaid before the notice (*o*). This right to revoke proceeds on the principle that each advance constitutes a separate consideration, and that under such a guarantie the advances are not made in pursuance of a request made once and for all by the party who gives the guarantie, but in pursuance of a request supposed to be made by him from time to time as the advances are made, and that if before any particular advance is made the person giving the guarantie informs the person making the advance that he withdraws the guarantie, the advance is not made at his request, and he, therefore, is not liable for it (*p*). Where, on the other hand, the consideration is not fragmentary but entire, as in the case of a person giving a guarantee to a firm that he will be responsible for the fidelity of some third party in consideration of their receiving him into their employ, there, inasmuch as the consideration for the guarantie, is given once and for all, it cannot be revoked at will, but must continue until the services are ended (*q*),—save only in the case where the

(*m*) *Meek v. Wallis*, 27 L. T. 650.

(*n*) *Burgess v. Eve*, L. R., 13 Eq. 450.

(*o*) *Offord v. Davies*, 31 L. J., C. P. 319; 12 C. B., N. S. 748; *Bradbury v. Morgan*, 31 L. J., Ex. 462. Such a guarantie would, it seems, be revoked by death; *Harris v. Fawcett*, L. R., 8 Ch. 866; 42 L. J., Chanc. 502; *Coulthart v. Clementson*, 5 Q. B. D. 44, 46; *Lloyd's v. Harper*, 16 Ch. D. 290, 314.

(*p*) See judgment of Cotton, L. J., in *Lloyd's v. Harper*, *supra*, p. 318.

(*q*) Nor is such a guarantie revoked by notice of the death of the guarantor; *Lloyd's v. Harper*, *supra*; *Culvert v. Gordon*, 3 Man. & Ry. 124.

employé has been guilty of dishonesty, when the surety, after giving notice to the employer, is entitled to withdraw from his guarantie, and to relieve himself from any further liability (*r*).

Appropriation.

Again, as may be seen from the following case, a continuing guarantie may be discharged by an appropriation of funds of the surety in the hands of the creditor.

A. & Co., bankers, advanced 2,000*l*. to B., a customer, by placing it to the credit of his general current account, and took as security a series of ten promissory notes, maturing at the rate of one per week during a period of ten weeks. C., as security for B., gave a written undertaking that, if the notes were not paid, he would secure the debt by a mortgage upon property of his own. Moneys were paid into B.'s account more than sufficient to meet the notes if they had been so applied, but as the account was at the same time largely drawn upon, it was at the dates of the maturing of the notes constantly overdrawn:—Held, that A. & Co., having received moneys which they might have applied to the satisfaction of the notes, were bound so to have applied them to the relief of the surety before applying them to the liquidation of the current account, and that the surety was consequently discharged (*s*).

#### SURETYSHIP GENERALLY.

Discharge of surety.

*Discharge of Surety—By Variation of Agreement.*—The rule as to the effect of a variation of the original agreement between the principals in discharging the surety has in a recent case been stated to be as follows. If there is any agreement between the principals with reference to the contract guaranteed, the surety ought to be consulted, and if he has not consented to the alteration, although in cases where it is without inquiry evident that the alteration

(*r*) *Burgess v. Eve*, *supra*; *Phillips v. Foxall*, L. R., 7 Q. B. 666, 678; *Sanderson v. Aston*, L. R., 8 Ex. 73.

(*s*) *Kinnaird v. Webster*, 10 Ch. D. 139; 48 L. J., Chanc. 348; 39 L. T. 494; 27 W. R. 212. See also *Browning v. Baldwin*, 40 L. T. 248.

is unsubstantial, or that it cannot be otherwise than beneficial to the surety, the surety may not be discharged, yet, if it is not self-evident that the alteration is unsubstantial, or one which cannot be prejudicial to the surety, the court will not, in an action against the surety, go into an inquiry as to the effect of the alteration, or allow the question, whether the surety is discharged or not, to be determined by the finding of a jury as to the materiality of the alteration or on the question whether it is to the prejudice of the surety, but will hold that in such a case the surety himself must be the sole judge whether or not he will consent to remain liable notwithstanding the alteration, and that if he has not so consented he will be discharged (*t*).

*Time or Indulgence given to Principal.*—Where the creditor has entered into a binding contract to give the principal debtor further time without the consent of the surety, the surety is discharged, provided the creditor has not, as he may do, expressly reserved his rights against him (*u*).

Time or indulgence given to principal.

The following case will exemplify this:—

W. Jones gave the following guarantie to a bank, on behalf of Henry Bowers:

“HENRY BOWERS’ MILL ACCOUNT.

“Please to open an account with, and honour the cheques of, Mr. H. Bowers on ‘mill account’ for whom I will be responsible.

“*Carmarthen, January 4, 1825.*

“W. JONES.”

(*t*) *Per* Cotton, L. J., in *Holme v. Brinskill*, 3 Q. B. D. 495, in which case, however, Brett, L. J., disagreed as to the effect of the non-materiality of the alteration, saying—“The surety is discharged where there has been a material alteration of some specific provision of the agreement, but not otherwise.” See also *Sanderson v. Acton*, L. R., 8 Ex. 73; 42 L. J., Ex. 621; *Wilson v. Lloyd*, L. R., 16 Eq. 60; *Polak v. Everitt*, 1 Q. B. D. 669; 46 L. J., Q. B. 218.

(*u*) *Davey v. Prendergrass*, 5 B. & A. 187; *Black v. Ottoman Bank*, 15 Moore, P. C. 472; *Boulton v. Mayor*, 19 C. B., N. S. 76; *Overend, Gurney & Co. v. Oriental Financial Corporation*, L. R., 7 H. L. Cas. 348; *Swire v. Redman*, L. R., 1 Q. B. D. 536; *Maingay v. Lewis*, 5 Ir. R., C. L. 220, Ex. To reserve a creditor’s right against a surety there must be a distinct expression of intention to reserve it. *Overend, Gurney & Co. v. Oriental Financial Corporation*, *supra*; *Muir v. Crawford*, L. R., 2 H. L. Cas. Sc. 456; *Ex parte Charlton*, 36 L. T. 561.

W. Jones was an attorney, and the professional adviser of the bankers, and, at the time, had a banking account with them. The bankers, upon receiving the document, opened an account with Bowers, and made various advances to him up to February, 1827, when they ceased to advance to him. It was the course of business of the banking-house occasionally to take the acceptance of their customers for the balance appearing to be due on the face of their accounts, which were termed *covers*; and the same was also shown to be the practice of a neighbouring bank. Jones was proved to have sometimes been consulted by the bankers, as their professional adviser, with respect to these acceptances; but it was not proved that he had personally any knowledge of the practice to require these bills as covers for overdrawn accounts.

In February, 1828, without Jones's knowledge or consent, the bankers took Bowers's acceptance, at three months, for the amount of their balance against him, and this bill was carried to the credit of his account, but was dishonoured at maturity.

In 1832, the bankers became bankrupt, and in an action by their assignees against Jones, commenced in 1833, it was adjudged that the bankers, by taking the acceptance, had given time to Bowers, the principal, and thereby had discharged Jones, the guarantor or surety (*x*).

Where a surety guarantees a series of payments to be made at stated periods, and time is given to the principal debtor in respect of one payment by a binding agreement, the surety is discharged from liability in respect of that payment, but not in respect of future payments (*y*).

The acceptance by a bank of a fresh security without any binding engagement by them to give time to A., does not discharge the surety (*z*).

(*x*) *Howell v. Jones*, 1 C. M. & R. 97. See also *Evans v. Bremridge*, 25 L. J., Chanc. 102.

(*y*) *Croydon Commercial Gas & Coke Company v. Dickinson & Pollard*, L. R., 2 C. P. D. 46; 46 L. J., C. P. 157.

(*z*) *Bell v. Banks*, 3 M. & G. 258. See 7 II. L. Cas. 348, *infra*; *Swire v. Redman*, 1 Q. B. D. 536.

Again, if there are two co-sureties and a further loan is made by the creditor to the principal, and the creditor takes an additional security for that and the former loan, and gives further time to the principal and one of the sureties, the other is discharged (*a*). And if, after a right of action has accrued to the creditor against two or more persons, he is informed that one of them is a surety only, and after that he gives times to the principal debtor without the consent of the surety, the rule as to the release of the surety equally applies (*b*).

An agreement with a *third* person to give further time to the principal debtor will not discharge the surety (*c*).

In equity it was held that a surety was released in the case of a debt due under seal by a mere verbal agreement to give further time (*d*); and since the 17 & 18 Vict. c. 83, such an agreement has been made capable of being set up by way of equitable defence.

*Non-disclosure and Fraudulent Concealment.*—As to how far a person receiving a guarantie is bound to disclose the whole previous dealings between himself and his principal debtor, the law is found thus stated by Mr. Justice Fry in *Davies v. London and Provincial Marine Assurance Co.* (*e*): “It has been argued here that the contract between the surety and the creditor is one of those contracts which I have spoken of as being *uberrimæ fidei*, and it has been said that such a contract can only be upheld in the case of there being the fullest disclosure by the intending creditor. I do not think that that proposition is sound in law. I think that, on the contrary, that contract is one in which there is no universal obligation to make disclosure; and therefore I shall not determine this case on

By non-disclosure and fraudulent concealment.

(*a*) *Fyner v. Hopkins*, 6 Jur. 889, *per* Bruce, V.-C.

(*b*) *Per* Lord Cairns, in *Overend, Gurney & Co. v. Oriental Financial Corporation*, L. R., 7 H. L. Cas. 348, 360.

(*c*) *Fraser v. Jordan*, 8 E. & B. 303.

(*d*) See *Davey v. Prendergrass*, 5 B. & Ald. 187, 192.

(*e*) 8 Ch. D. 469, 475.

that view. But I do think that the contract of suretyship is, as expressed by Lord Westbury in *Williams v. Bayley* (d), one which 'should be based upon the free and voluntary agency of the individual who enters into it.' I think that principle especially applicable here, because there is no consideration in this case, as in many cases of suretyship, for the contract so entered into; and, therefore, I think, to use the language of Lord Eldon, in *Turner v. Harvey* (e), it is a contract in respect of which a very little is sufficient. Very little said, which ought not to have been said, and very little not said which ought to have been said, would be sufficient to prevent the contract being valid. It is one, furthermore, in which I think that everything like pressure used by the intending creditor will have a very serious effect on the validity of the contract; and the case is stronger where that pressure is the result of maintaining a false conclusion in the mind of the person pressed." The officers of a company, believing that the retention of money by one of their agents amounted to felony, directed his arrest. Certain friends of his came to the officers of the company and proposed to deposit a sum of money by way of security for any deficiency. On the same day the company was advised that the act of the agent did not amount to felony, and the directions for the arrest were withdrawn. Later in that day the friends of the agent had a second interview with the officers of the company, and agreed to deposit a sum of money as security for his default, no mention being made of the withdrawal of the directions for the arrest. The sum of money was afterwards deposited with trustees on an agreement for the security of the company. And it was held that the change of circumstances ought to have been stated to the intending sureties, and that the agreement was to be rescinded, and the monies returned to the sureties (f).

(d) 11. R., 1 H. L. Cas. 200, 219.

(e) Jac. 169.

(f) 8 Ch. D. 469, 473. See also *North British Insurance Company v. Lloyd*, 10 Exch. 523.

Certain bankers advanced 2,600*l.* to A. upon the security of an indenture of mortgage to them of certain property of A., and also of a joint and several promissory note of the same date as the deed, in which a third party joined with A. as surety. At the time of this advance A., who had long been a customer, owed them 800*l.*, and it was arranged between him and the bankers, that this sum should be deducted from the 2,600*l.*, but neither by the recital in the mortgage deed or otherwise was the surety apprised that such was the case, and that recital moreover expressly, but falsely, stated that the entire interest in a 1,500*l.* policy of assurance, already deposited with the bankers, would, inasmuch as the 800*l.* had been repaid to the bankers, be available as collateral security for the 2,600*l.* The mortgage deed was prepared by the bankers' solicitor, and read over in his office to the surety and A. previously to its execution and to the surety's signature of the promissory note. The circumstances were held to constitute such a fraud in law as released the surety, although it was not suggested that any intentional fraud was imputable to the bankers personally (*g*).

*By the Creditor's taking Securities.*—Thus it is a rule that a surety is entitled to the benefit of any security which the creditor has received for the debt, though he has received it after the contract of suretyship; and therefore, where the creditor has so dealt afterwards with such security, that on payment by the surety it cannot be given to him in the same condition as it was when the creditor first acquired it, the surety is discharged to the extent of that security (*h*).

By the creditor's taking, or failing to make available, securities to the benefit of which the surety is entitled.

The defendant was surety for the repayment of a sum

(*g*) *Stone v. Compton*, 5 Bing. N. C. 142.

(*h*) *Campbell v. Rothwell*, 47 L. J., Q. B. 144; 38 L. T. 33. See also *Liquidators of Overend, Gurney & Co. v. Liquidators of Oriental Financial Corporation*, L. R., 7 H. L. Cas. 348; *Merchants Bank of London v. Maude*, 18 W. R. 312.

of money advanced by the plaintiff to the principal debtor. As a further security for the advance, the principal debtor deposited with the plaintiff a policy of life insurance. The principal debtor subsequently became bankrupt, the advance remaining unpaid, and the plaintiff proved against his estate for the full amount of the advance without valuing the policy of life insurance as a security, which was in consequence claimed by the trustee in bankruptcy as part of the bankrupt's estate. It was contended by the defendant in an action against him as surety, that by not valuing the policy, and so depriving him of the benefit of it, the plaintiff had discharged him from all liability as surety. Held, that the omission to value the policy was at most a mere neglect or omission on the part of the plaintiff, and as such did not discharge the defendant from all liability as surety, but only to the extent of the value of the policy (*i*).

Richard Cox was a banker in copartnership with Messrs. Morrell, under the firm of Cox & Morrell. He was also engaged in collieries with one Davies, under the firm of Cox & Davies.

Cox & Morrell were in advance to Cox & Davies.

Richard Cox having applied to his partners for a further advance, it was agreed that they should advance a further sum upon his brother, John Cox, becoming security for the repayment of 3,000*l*.

John agreed, as surety for Richard, to execute a joint and several bond to James and John Morrell for 3,000*l*., upon having a counter bond for the like sum from Cox & Davies to indemnify him.

A joint and several bond was executed by John but not by Richard; the counter bond was given by Cox and Davies, and further advances were made by the bank.

Some time after this, Richard ceased to be a partner in the bank.

(*i*) *Rainbow v. Jiggins*, 5 Q. B. D. 138; 49 L. J., Q. B. 353; 28 W. R. 428.

The bankers were considered to have released the surety by neglecting to obtain the bond from the principal debtor Richard Cox (*j*).

The acceptor of a bill of exchange knows that by his acceptance he does an act which will make him liable to indemnify any indorser of it who may afterwards pay it. The indorser is a surety for the payment to the holder, and having paid it, is entitled to the benefit of any securities to cover it deposited with the holder by the acceptor. He is so entitled, whether at the time of his indorsement he knew, or did not know, of the deposit of those securities. The surety's right in this respect in no way depends on contract, but is the result of the equity of indemnification attendant on suretyship.

A., a member of a firm pledged his separate estate to a bank to secure to the bank the balance for the time being owing to the bank from the firm. Afterwards the firm accepted bills of exchange which were indorsed by B. to, and discounted for him by, the bank. The firm became bankrupt and the bills were dishonoured at maturity. The bank having demanded of B. payment of the amount due on the bills, B. claimed to be a surety for the firm in respect of the bills, and to be entitled as such surety to the benefit of the securities held by the bank:—Held, that B. was entitled to receive them (*k*).

Again, a surety is released, to the extent of the value of goods assigned by the principal debtor, by the creditor's failing to register the assignment under the Bills of Sale Act, and by his not taking possession when default was made in payment of interest, and when bankruptcy was to his knowledge impending (*l*).

*By Release of Debtor.*—As by giving time to the prin- By release of debtor.

(*j*) *Bonsor v. Cox*, 4 Beav. 379; *S. C.*, 6 Beav. 110.

(*k*) *Duncan, Fox & Co. v. New South Wales Bank*, 6 App. Cas. 1, reversing 11 Ch. D. 88.

(*l*) *Wulff v. Jay*, L. R., 7 Q. B. 756; 41 L. J., Q. B. 322.

principal debtor the creditor releases the surety unless he expressly reserves his rights against him, so does he release him by giving the debtor an absolute release of the debt, unless there is a reservation of the rights against the surety. A surety is discharged by the principal creditor's becoming a party to a composition deed releasing the principal debtor (*m*), unless there is an express reservation made against him (*n*), because the effect of his doing so is to voluntarily discharge the principal debtor from any further liability. The principal debtor's obtaining an order of discharge in bankruptcy or liquidation, however, does not discharge the surety (*o*).

A customer and another person as his surety signed a joint and several promissory note, payable to the bankers, to secure them, &c., and they afterwards executed a composition deed, whereby, in consideration of four shillings in the pound, the bankers and other creditors released the customer from the payment of the debts respectively set opposite their names, the amount of the promissory note being set opposite the bankers' names; the deed contained an express clause that it should not operate to invalidate, prejudice or affect any bonds, bills, notes or other securities, joint or several, &c., as to the claim against any such surety; the deed was held clearly not to release the surety, there being no fraud on the other creditors, since, the clause appearing on the face of the deed, all who executed it must be taken to have been aware of, and agreeable to, the reservation of the rights against the surety (*p*). It must be remembered, as previously stated, that to reserve a creditor's right against a surety there must be a distinct expression of intention to reserve it (*q*).

(*m*) *Green v. Wynn*, L. R., 4 Ch. 204; *Leathley v. Spyer*, L. R., 5 C. P. 595; *Kearsley v. Cole*, 16 M. & W. 128.

(*n*) *Bateson v. Gosling*, L. R., 7 C. P. 9; *Cragoe v. Jones*, L. R., 8 Ex. 81.

(*o*) *McGrath v. Gray*, L. R., 9 C. P. 216; *Breslaire v. Brown*, 3 App. Cas. 672; *Ex parte Jacobs*, *In re Jacobs*, 10 Chanc. 211; *Ellis v. Wilmot*, L. R., 10 Ex. 10; *Ex parte Agra Bank*, *In re Barber*, L. R., 9 Eq. 775.

(*p*) *North v. Wakefield*, 13 Q. B. 536.

(*q*) See *ante*, p. 209.

Cases of composition with creditors frequently occur in which the interests of bankers, upon guaranties, are deeply concerned, and the form in which such guaranties are expressed ought always to be such that the bankers should be secured of a priority of repayments of advances over the creditors under the composition deed. For this purpose it is necessary that the guarantie should be made not conditional to pay on failure of the traders to repay, but absolute. An illustration will be found in the following case, in which the bankers sued the trustees under the composition deed to recover the amount of their advances.

Carr & Co., being insolvent, compounded with their creditors by agreeing to pay them a composition of seven shillings and sixpence in the pound, in three instalments, and execute a conveyance of their real and personal estate to certain trustees, in trust to permit them, Carr & Co., to carry on the business, subject to the control of the trustees, and to pay thereout to the creditors the three instalments; and, in case of full payment, to reconvey and reassign the estate to Carr & Co.; but upon default of such payment then in trust to sell, and, after deducting out of the proceeds interest, costs and amount of mortgages, to divide the remainder amongst themselves and the other creditors.

Carr & Co. continued, accordingly, to carry on the business, and opened an account with a banking company, from whom they obtained large advances. The bank applied to, and obtained from, the trustees the following guarantie:—

“Carr & Co., having assigned over all their real and personal estate to us in trust for securing a composition of seven shillings and sixpence in the pound to their several creditors executing such deed, and it being necessary to open a banking account for the purpose of carrying on the said trade, in order that the stock and goods on hand may be wrought up and converted into money, for the purpose of paying such dividends; and you having, at our request, consented to open a banking account on the credit of the

names of Carr & Co., or of any person or persons for the time being carrying on that concern: we do hereby promise and engage that any sum or sums of money to become due to you or to the said banking company, in respect of such account, shall, in the first instance, be paid to you out of the net proceeds of the trust estate, so far as the same will extend to pay."

Further advances were made by the bank to Carr & Co. subsequently to this guarantie.

The trustees subsequently sold the property of Carr & Co., under the provisions of the composition deed, and the proceeds were insufficient to pay the creditors the composition of seven shillings and sixpence in the pound; the Court held, that the meaning of the guarantie was not that the trustees should be liable to the bank out of the proceeds realized from the estate of Carr & Co. only after payment of the composition of seven shillings and sixpence to the creditors, but that they were liable, in the first instance, to repay, out of the proceeds, the whole amount of the advances made by the bank to Carr & Co., as well before as after the guarantie, and the guarantie was held to extend to advances made before it was given, notwithstanding the objection was pressed upon the Court, that the recital, stating it to have become necessary to *open* an account, &c., pointed only to future advances (*r*).

A surety who guarantees the payment of an instalment under a composition resolution, is not released by the debtor's being subsequently adjudicated bankrupt at the suit of creditors who are not bound by the resolution (*s*).

By payment  
by principal.

*Payment.*—Payment by the principal debtor discharges the surety and part payment does so *pro tanto*, but not a payment that has to be regarded as being a fraudulent preference (*t*).

(*r*) *Wilson v. Croven*, 8 M. & W. 584, 595.

(*s*) *Glugg v. Gilbey*, 2 Q. B. D. 209; 46 L. J., Q. B. 325.

(*t*) See *Peltz v. Cooke*, L. R., 6 Q. B. 790; *Walwyn v. St. Quentin*, 2 Esp. 515.

*Promissory Notes as Guaranties.*—A guarantie is sometimes given in the form of a promissory note signed by the guarantor; but in such case the instrument will often be found to operate as an agreement, and must consequently be stamped accordingly, in order to be made effectual.

Promissory  
notes given as  
guaranties.

Thus, where two persons, as guarantors or sureties for a customer of a bank, signed together with him an instrument in the following form:—

*“We jointly and severally promise to pay the sum of 100*l*. to the Lincoln and Lindsey Banking Company, or their order, on demand, with interest.”*

And on the back of the document signed this indorsement:—

*“The within note is given for securing floating advances from the said banking company to the customer, with interest from the respective times when such advances have been or may be made, together with commission, stamps, postages, and all usual charges and disbursements, not exceeding in the whole, at any time, the sum of 100*l*.”*

In an action by the bank against one of the two sureties on the note, to which there was a plea of the Statute of Limitations, and payments were shown to have been made by the customer, in reduction of the balance due on the banking account, within six years before action, the Court held, that it was essential to the plaintiff's case to take notice of the indorsement, in order to point the payments to the note, and to show it to be a security for the floating balance, *for which purpose it was an agreement*, and required to be stamped (*u*).

If the security or guarantie taken was in the form of a joint and several promissory note, payable to the bankers on demand, and signed by the customer and the guarantor for a given sum, it was at law no defence to an action against the guarantor on the note to allege that he made the note as a surety, and for the accommodation of the

(*u*) *Cholmley v. Darley*, 14 M. & W. 344.

customer, with the knowledge of the bankers, and that they, after the note became due and payment had been demanded of the customer, being holders, agreed, without the consent or leave of the guarantor, to give time to the customer, unless he can show that there was a specific agreement on the part of the bankers to take the note from the guarantor as a surety only (*v*). In equity, however, such a defence was good; and, consequently, in law might be set up by way of *equitable plea* (*x*).

It is not uncommon for joint stock banks to take a joint and several promissory note, signed by the customer and other parties, the latter of whom are intended to be sureties for the former, in order to secure any balance that may become due to the bank on his account with them, or to secure advances made by them to him.

It is very material that the persons having the management of the business or of the accounts of the bank should be satisfied that there is nothing in their deed of settlement to prohibit any arrangement of this nature. Many deeds of settlement contain stringent provisions to prevent the funds of the company being advanced, or risked upon merely personal security.

There is no invariable rule that all payments made subsequently to giving a bond by a borrower and sureties to a bank are to be applied in immediate and final liquidation of the sum named in it, or of the first items in the borrower's debit: or that if the borrower after the giving of the bond, on a long course of transactions, be for a time in advance to the bank, the bond is thereby satisfied (*y*).

It may, in default of express stipulation, be inferred from the language and conduct of the parties after execution of the bond, that the intention was for the bond to stand as a

(*v*) *Manley v. Boycott*, 2 El. & Bl. 46; *Price v. Edmunds*, 10 B. & C. 578; *Strong v. Foster*, 17 C. B. 201. But see *Hall v. Wilcox*, 1 M. & Rob. 58.

(*x*) *Davies v. Stambank*, 6 De G., M. & G. 679; *Hollier v. Eyre*, 9 C. & F. 45; *Strong v. Foster*, 25 L. J., C. P. 106.

(*y*) *Henniker v. Wigg*, 4 Q. B. 792.

continuing security, in which case the rule of application of payments would not apply (z).

A joint and several promissory note is given to a banker by a customer and his surety to secure advances made by the banker. The customer afterwards pays into the bank generally sums exceeding the amount of the advances, but also draws out to a still larger amount, and becomes bankrupt. In such case the surety is liable, for he cannot insist that the payments should be appropriated in discharge of the sum secured by the note (a).

A bank being in advance to a customer took a promissory note signed by him and his wife, who had no separate property. The husband died insolvent, and nine days after his death a partner in the bank went to the house of his widow, taking with him a proper stamp, and asked her if she could pay any money on account, and on her answering that she could not, obtained her signature to a new note written by himself upon the stamped paper. It being doubtful whether she knew that she was not liable upon the original note, and nothing having been said at the interview respecting her non-liability, the note so obtained was considered in equity to be invalid and unavailable in the hands of the bankers for the advances made to her husband (b). But when a married woman, having a separate estate in property settled upon her, joined with her husband in a promissory note, payable on demand, to secure the balance against him at his bankers, and a balance continued against him until after his death, which happened about seven years afterwards, and after this event she signed a new promissory note for the unsecured balance, a Court of Common Law determined that the latter note was binding upon her, as there was a good consideration for it (c).

Promissory  
notes by mar-  
ried women.

(z) *Henniker v. Wigg*, *supra*.

(a) *Ex parte Whitworth*, 2 M., D. & De G. 164.

(b) *Coward v. Hughes*, 1 Kay & J. 443.

(c) *La Touche v. La Touche*, 3 H. & C. 576; 34 L. J., Exch. 85.

## CHAPTER XXIII.

## GUARANTIES FOR GOOD CONDUCT OF CLERKS.

WITH respect to guaranties for the good conduct of clerks of bankers, a point which has already been adverted to, namely, whether the guarantie that is taken is in such a shape as to stand good in case of a change in the members of the banking house, arises more frequently in cases of guaranties for the fidelity of clerks than in those of guaranties for the repayment of advances to customers, and therefore requires to be more fully developed.

In considering this subject the Courts are chiefly guided by the intention of the parties. This is mostly discoverable only from the expressions they have used in the instrument of guarantie. In other words, it is most important for the security of bankers that the language used should clearly and undeniably demonstrate the intention that the guarantor, whether he undertakes for the good conduct of the clerk during a limited or an undefined period of time, should be bound to the *banking house*, not to the persons who are the members of the establishment at the date of the guarantie; because, in case the guarantor is only bound in the latter way, upon any change in the partnership, by death, by retirement or by taking in fresh partners, the new partnership might find themselves unable to enforce the obligation.

The following is an illustration of what has just been said as to the effect of a change of partnership.

A guarantor executed a bond, whereby he undertook to A. for the fidelity of a clerk, so long as he should continue in A.'s service as clerk. A. took a partner, and brought an

action on the bond, and assigned as a breach that the clerk had received money on account of the partnership, and had not paid it over to the partners; but A. was not permitted to recover, the Court saying that when A. took a partner there was an end of the obligation; that the condition was confined to A. alone, and the breach assigned was not within the condition, and there was nothing to show the guarantor to have intended to be bound for the clerk's fidelity to any other person than A. (*a*).

This decision, it is true, has been questioned by some judges (*b*); but the principles on which it is founded do not appear, either expressly or impliedly, to have been decided to be inapplicable to cases where the facts were identical, and the terms of the guarantie equivalent (*c*).

In connexion with this class of cases may be here mentioned one which can, however, in general only be applicable in instances where a banking-house is conducted by a single person, without partners.

Where a bond was taken that a clerk should serve faithfully, and account for all money, bills, notes, &c., which he should receive, &c., to the banker and his executors, administrators and assigns, it was held that such bond did not make the surety liable for money, &c., received by the clerk in the service of the executors, &c., who continued the business and retained him in the same employment (*d*). This case turned upon the intention, which was held to be to guarantee the service to the testator and no longer, and

(*a*) *Wright v. Russell*, 3 Wils. 530; 2 W. Bl. 934.

(*b*) In *Barclay v. Lucas*, 3 Dougl. 321; 1 T. R. 291, n. But *Barclay v. Lucas* has not escaped without much question; see the note at the end of the report in 3 Dougl. 321. However, *Chapman v. Beckington*, 3 Q. B. 722, recognizes the principle of it, and the same seems to be the ground of decision in *Metcalf v. Bruin*, 12 East, 400, and *Wilson v. Craven*, 8 M. & W. 584; viz. that the bank was the same all along.

(*c*) *Dry v. Davey*, 10 A. & E. 30.

(*d*) *Barker v. Parker*, 1 T. R. 287; but compare *per* Lord Ellenborough, C. J., *Strange v. Lee*, 3 East, 490. Lord Mansfield, C. J., 1 T. R. 295, distinguishes *Barclay v. Lucas*, by observing that there the same trade was carried on by the original masters in the same manner, and the only difference was the introduction of a new partner.

must be considered with reference to the statutory enactment (passed since its date) mentioned above (*e*).

In a case where a bond was given to guarantee to a company not incorporated the faithful services of a clerk, and the bond was made to and with trustees on behalf of the body: the Court held, construing the instrument with regard to the obvious intention of the parties, that it might be sued upon by the trustees at any time during the continuance in the service of the actual body of persons carrying on the same business under the same name, notwithstanding any intermediate change of the original holders of the shares, either by death or transfer (*f*).

So where a joint-stock banking company had been established under the 7 Geo. IV. c. 46, and a guarantie was given to it, and then, upon a considerable accession of proprietors and capital, and an increase in the number of directors, the company took another name, but was not shown to differ in its constitution, but remained the same bank, though with a different name: it was held, that its public officer might sue and recover upon the guarantie given to the former establishment (*g*).

Another point to be considered is, that a guarantie for the faithful services of a clerk, given at a time when his employment comprises a certain routine of duties, will not extend to cover other or additional duties that may be imposed on or accepted by him; thus if a clerk to a bank, for whose good conduct *as clerk* a guarantie has been given, is made *manager*, and it is *shown conclusively that he ceased to be clerk when he became manager*, so that no breach of the bond could have happened after he became manager, that will be an answer to an action by the bankers on the bond against the surety, founded on misconduct as manager (*h*).

(*e*) See *supra*, p. 203.

(*f*) *Metcalf v. Bruin*, 12 East, 400.

(*g*) *Wilson v. Craven*, 8 M. & W. 584.

(*h*) *Anderson v. Thornton*, 3 Q. B. 271; and see *Skillett v. Fletcher*, L. R., 1 C. P. 217; 2 C. P. 469.

It is scarcely necessary to observe that the conduct, which amounts to a default on the part of the clerk, and which renders the surety liable upon his undertaking, must be some act or omission, some malfeasance or non-feasance, within the scope of the duties appertaining to the situation he fills.

A clerk of a provincial bank (in Devonshire), who was sent by the manager, at the request of a customer, to his residence, about eleven miles from the bank, in order to receive a large sum of money, to be placed to the customer's account with the bank, and who, casually, on his way back, lost the money out of his pocket, was held to have received the money in the course of his employment as clerk; and although the jury found it not to be the custom of bankers in that part of the country, to send for their customers' money as above stated, a surety, who had guaranteed the bank that the clerk "should well and faithfully serve them as a clerk, and should not cancel, obliterate, spoil, destroy, waste, embezzle, spend or make away with any of the books, papers, writings, stamps, cash, bills of exchange, promissory notes or other property of the bank, or of any of the customers, which should be deposited in his hands, or intrusted to his custody or possession, or come to his care, custody or possession," was responsible to the extent of the moneys lost (*i*).

The same would be the decision in case of the payment of a cheque, or the receipt of money, *after banking hours*, or of sending the clerk to London on a sudden emergency, to obtain funds, or the like (*k*).

The fact of a clerk's having received into his personal possession a sum of money, and having lost it, is strong evidence of negligence; but it would have been an answer to the action above referred to, to have shown that the loss had been occasioned by robbery before the clerk

(*i*) *Melville v. Doidge*, 6 C. B. 450.

(*k*) See 6 C. B. 454.

could have got back to the bank, and without his default (l).

The reason for taking such security is not only the obvious one, that, in case of any embezzlement by the clerk, the banker may have the means of protecting himself against the loss thereby caused, but also that he may have the same protection, in case of any loss arising from the merely careless or thoughtless inattention to his duty of the clerk, in which case, without such security, the loss must ultimately fall on the banker, assuming the clerk to be unable to make it good (m).

*Evidence.*—In cases of guaranties or securities of any kind, taken for the good behaviour of clerks, it is material to bear in mind that whatever is evidence available against the principal, is available against the surety.

Thus, where bankers sued the obligor of a bond given for the fidelity of a clerk, entries of receipts of money by the clerk in the books kept by him in discharge of his duty as clerk to them were held to be, after his death, evidence against the surety of the fact of his having received the moneys therein mentioned, it being part of his guaranteed duty to keep those books (n).

*Discharge of Guarantor.*—As has been already stated (see p. 207), a person giving a guarantee to a firm that he will be responsible for the faithful services of a servant, cannot revoke it after once the consideration for that guarantee has been performed: that is to say, when once the service has commenced; nor will his death act as a revocation of the guarantee, or discharge the guarantor. Thus, in May, 1863, a father, on the occasion of the admission of his son as an underwriting member of Lloyd's, addressed to the managing committee of that body a letter, by which

(l) See *Walker v. British Guarantee Association*, 21 L. J., Q. B. 257; 18 Q. B. 277.

(m) *Rogers v. Kelly*, 2 Camp. 123.

(n) *Whitnash v. George*, 8 B. & C. 556.

he held himself responsible for all his son's engagements in that capacity. Lloyd's was then a voluntary association, governed by certain bye-laws, under which a person once admitted a member could not be excluded from membership, except in the event of his bankruptcy or insolvency. The association consisted of underwriting members, non-underwriting members, and subscribers. The practice of the underwriting members was to underwrite policies of marine insurance for the benefit of various owners of property, both members of the association and outsiders; but the policies with outsiders could only be effected through the agency of insurance brokers, who were either members of, or subscribers to, the association. The association as such incurred no liability on the policies underwritten by its members.

In 1871 the society was incorporated by Act of Parliament, all the rights of the committee on behalf of the members being vested by the act in the corporation. In 1876 the father died, and notice of his death was shortly afterwards given to Lloyd's. In 1878 the son became bankrupt, and thereupon ceased to be a member of Lloyd's:—Held, by the Court of Appeal (affirming the decision of Fry, J.), that the guarantee was not determined by the death of the father, or by the notice of it, but that his estate was liable in respect of engagements contracted by the son after his death (o).

*Employer's Neglect.*—If, however, in the case of a continuing guarantie for the honesty of a servant, the master discovers that the servant has been guilty of acts of dishonesty in the course of the service to which the guarantie relates; and if, instead of dismissing the servant as he may do at once and without notice, he chooses to continue him in his employ without the knowledge and consent of the surety, express or implied, he cannot afterwards have

(o) *Lloyd's v. Harper*, 16 Ch. Div. 290.

recourse to the surety to make good any loss which may arise from dishonesty of the servant during the subsequent service (*o*). Similarly, the surety, after the servant has been guilty of dishonesty, may give notice thereof to the master and withdraw from his guarantie and relieve himself from any further liability (*p*).

*Non-disclosure.*—What has been said in the previous chapter as to the duty of the employer to disclose any material fact likely to make the surety abstain from entering into the guarantie applies equally to the form of guaranties now under discussion, and to which, therefore, the reader must be referred for information (*q*).

*Alteration.*—Again, any variation in the agreement to which the surety has subscribed, that is made without his knowledge or consent, and which may prejudice him, or which may amount to a substitution of a new agreement for a former agreement, even though the original agreement may, notwithstanding such variation, be substantially performed, will discharge the surety.

This may be illustrated by the following example: where a surety guaranteed the faithful and honest conduct of a clerk, who was paid by salary, and his employers, some time afterwards, changed this part of their arrangement with him, and paid him by means of a commission, which amounted to more than his former salary: it was held, that the surety was discharged by reason of the alteration (*r*). Again, A. became guarantor of the good conduct of a clerk in a bank; and the clerk was subse-

(*o*) *Phillips v. Foxhall*, L. R., 7 Q. B. 666; 41 L. J., Q. B. 293; 27 L. T. 231; *Sanderson v. Aston*, L. R., 8 Ex. 73.

(*p*) *Burgess v. Eve*, L. R., 13 Eq. 450.

(*q*) See p. 211.

(*r*) *North Western Railway Company v. Whinray*, 10 Exch. 77. When the condition of the bond did not contain any stipulation, that the same salary should be continued, either express or implied, the guarantor would not be discharged by a reduction of the salary. *Frank v. Edwards*, 8 Exch. 214; explained, 10 Exch. 81, 82.

quently appointed to a better situation in a branch of the bank, and A. extended his guarantie to the conduct in this new situation. The clerk afterwards undertook, on having his salary raised, to become liable to one-fourth of the losses on discounts, and then allowed a customer to overdraw, whereby the bank suffered loss. A. was held not to be liable for this loss to the bank, though it was within the terms of his original guarantie, because the fresh arrangement *made without his knowledge* was a discharge (s).

*Change of Firm.*—Lastly, as has been stated, unless from the terms of the guarantie it can be seen that the intention was to secure the good conduct of the clerk while serving the *banking-house*, whether the same persons who constituted the partnership remained in it or not, a change in the firm releases the surety (t).

(s) *Bonar v. Macdonald*, 3 H. L. Cas. 226.

(t) See *ante*, p. 222.

## CHAPTER XXIV.

## CRIMINAL ACTS OF SERVANTS, ETC.

*Larceny and Embezzlement by Clerks or Servants.*—By 24 & 25 Vict. c. 96, s. 67, it is enacted, that whosoever, being a clerk or servant, or being employed in the capacity of clerk or servant, shall steal any chattel, money or valuable security, belonging to or in the possession or power of his master or employer, shall be guilty of felony; and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three (now by 27 & 28 Vict. c. 47, *five*) years; or he may be imprisoned with or without hard labour or solitary confinement for a term not exceeding two years; and, if a male under the age of sixteen, may be whipped if the court think fit in addition to the imprisonment. And as regards embezzlement it is enacted by sect. 68, whoever being a clerk or servant shall fraudulently embezzle any chattel, money or valuable security which shall be delivered to or receive or taken into possession by him for or in the name or on the account of his master, shall be deemed to have feloniously stolen the same, and punished accordingly (*x*). The crime of embezzlement differs from larceny in that it is committed in respect of property which is not at the time in the actual or legal possession of the owner (*y*). On an indictment for embezzlement a prisoner may be found guilty of larceny, and *vice versâ* (*z*). By the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49),

(*x*) See *Reg. v. Negus*, L. R., 2 C. C. R. 34; *Reg. v. Foulkes*, *ibid.* 150.

(*y*) See Blackstone, bk. iv. p. 135.

(*z*) Sect. 70.

a person between the ages of twelve and sixteen, charged with larceny or embezzlement (or an attempt) as a clerk or servant may with his consent be dealt with summarily, and if found guilty may be fined to the extent of ten pounds, or be imprisoned with or without hard labour to the extent of three months, &c., &c. And by the same act an *adult*, *i. e.* a person of the age of sixteen or upwards charged with larceny or embezzlement (or an attempt) as a clerk or servant, may, provided in the opinion of the court the value of the property in respect of which the offence is alleged to have been committed does not exceed 40s., and the court thinks proper and he himself consents to be summarily dealt with, be so dealt with; and if found guilty be fined up to the sum of 20*l.*, or be imprisoned with or without hard labour for any term not exceeding three months (*a*). As regards this section, however, it is provided that if the offence is one which by reason of a previous conviction on an indictment of the person charged is punishable with penal servitude the court shall not deal summarily with the act.

If a clerk commits an embezzlement on the bank, and his father, in order to cover his defalcations, transfers stock into the name of the banker, this is a composition of a felony to prevent a prosecution, and it seems that the value of the stock cannot be recovered, nor will the stock be ordered to be retransferred (*b*). But where a clerk in a banking company embezzled a large sum of money of his employers, and before his conviction he deposited the deeds of some real estates with the company, and directed a transfer of certain policies of assurance on his life to be made to the company, as a security, so far as they would extend, for the money taken, and the company afterwards successfully prosecuted him for the embezzlement to conviction: it was held, that the money taken was a debt due from the felon to the company, and a good consideration

(*a*) See sect. 4.

(*b*) *Claridge v. Hoare*, 14 Ves. 59.

for the securities given by him to the company, and that the company was entitled to realize them (*b*).

*Civil Remedy.*—Where an injury amounts to an infringement of the civil rights of an individual, and at the same time to a felonious wrong, a cause of action arises immediately upon the commission of the offence, but it was said could not be enforced till the injured party had fulfilled his public duty and brought the felon to justice, that is to say, if he were able to do so (*c*). This rule, however, seems to be much doubted, and in a recent case it has been held that an action for a felony, if otherwise maintainable, would be maintainable without showing that the felon had been prosecuted (*d*).

(*b*) *Chowne v. Baylis*, 31 L. J., Chanc. 757; 31 Beav. 351.

(*c*) See cases discussed in *Wells v. Abrahams*, L. R., 7 Q. B. 557.

(*d*) *Midland Ins. Co. v. Smith*, 6 Q. B. D. 561. See also *Ex parte Ball, Re Shepherd*, 10 Ch. D. 673.

## CHAPTER XXV.

## BANKERS GIVING SURETIES AS TREASURERS.

WE will in this chapter advert to the cases in which bankers may be required to find sureties upon their appointment as treasurers to public bodies.

A., B. & Co., entered into a joint and several bond, for the faithful performance by A., of his duties as treasurer of a poor law union, in receiving, &c. moneys, &c. A. and another person were bankers, and A. had, in fact, never been in the exclusive receipt of the moneys of the union, which were paid into the bank, the overseers of the parishes constituting the union having been directed by the board of guardians, in their printed contribution warrants, "to pay to Messrs. Brodie & Co.," and the cheques drawn by the board requiring A. and his partner to pay, &c.

The Court held it to be an established principle, that for moneys paid to two or more parties the surety for one is not liable; and therefore, that if a person is surety for another, for the due accounting for moneys received by him, the receipt of moneys by that person and his partner is not the same as the receipt by him alone, because the surety may be willing to be accountable for one individual, but not for him and his partner, and a payment to one partner is a payment to both. Here the board drew cheques on the banking firm, treating them as their joint treasurers, and from that it was inferred that they agreed to the moneys being paid into the bank, to their credit, just as any other customer. Hence, when the bank failed, with a balance due to the union in its hands, the sureties were held not to be liable, and a sum equal to the above

balance, having been paid to the board of guardians by one of them under a mistake of facts, was held to be recoverable (*a*).

If the guarantie had been for the good behaviour of the partners, and that they and the survivor and survivors of them should account for, &c. all moneys paid to them, or either of them, or any person thereafter in partnership with them, &c., the retirement of one of the partners would not have released the surety (*b*).

Where the guardians of a poor law union took a bond with sureties for the honest and faithful performance of his duties by a banker appointed the treasurer of the union, one of which duties was, according to the regulations of the poor law board, to pay out of any moneys of the guardians in his hands all orders drawn by them on him; and the guardians took the amount of several orders partly in money, partly in bank notes of the banker himself, and partly in a draft upon the banker's correspondents in London, and then the bank stopped payment, the guardians having the notes in their hands, either having never parted with them or holding them on their being returned after the stoppage by persons to whom they had been paid away, the Court held, that the sureties were not liable: for the guardians had conclusively elected to treat the orders as paid, and the notes were taken at their peril; and the drafts had been given merely for their convenience (*c*).

A person became surety to the guardians of a poor law union by a bond, conditioned that the treasurer of their union should discharge the duties of his office "by receiving all moneys tendered to be paid to the board of guardians, by paying out of the moneys in his hands of the guardians all orders drawn on him on their behalf," and by paying over to the guardians all balances, moneys,

(*a*) *Mills v. Alderbury Union*, 3 Exch. 590.

(*b*) *University of Cambridge v. Baldwin*, 5 M. & W. 580.

(*c*) *Lichfield Union v. Greene*, 26 L. J., Exch. 140; 1 H. & N. 884. In such case the guardians are left to prove against the estate of the bankrupt banker on the notes and draft. *S. C.*

&c. due to the union, &c. The treasurer, who was a corn factor, had extensive dealings in corn, and open accounts in trade with the overseers of several of the townships who were farmers. No money was received from these townships, but it was the practice of the treasurer to debit the overseers in his trade account with the amount of the poor rate ordered by the guardians to be paid, and then to debit himself with the amount as paid to him as treasurer. His accounts were audited half-yearly, and the credits in corn were allowed by the auditors as payments in money. At the last audit, the auditors found that the sum of 239*l.* 1*s.* 10*d.* was due to the guardians, and the Exchequer Chamber held that the surety was liable, inasmuch as between the treasurer and the overseers money had in effect passed (*d*).

As regards evidence of the liability of the guarantor in these cases, we may point out—

1. That an account, delivered by a clerk, cashier, &c., charging himself, is evidence against his surety.

2. That, in case such account is made out by the clerk, and he continues to receive payments on account of the banker, and subsequently pays in moneys or takes credit for salary or disbursements, those payments are not necessarily to be first applied to extinguish the previous balance, when the subsequent receipts are equal in amount to the payments (*e*).

(*d*) *Pattison v. Bedford Union*, 1 H. & N. 523.

(*e*) *Lysaght v. Walker*, 5 Bligh, N. S. 1.

## CHAPTER XXVI.

## APPROPRIATION OF PAYMENTS.

WHERE a customer has a running account with a bank, the balance of which is sometimes for him and at other times against him, the question often arises, how are the payments by the bankers to be applied?

Thus, in the case of a banking partnership, where one partner dies, and the customer goes on dealing with the bank as before, there being no new account nor any settlement made, and then the banking-house becomes bankrupt, the account at the death of the partner being about 1,700*l.* in the customer's favour, but being afterwards and before the bankruptcy reduced by payments made by the bankers, on his account, to about 450*l.* in his favour; but again showing a balance for him exceeding the former amount of 1,700*l.*, at the time of the bankruptcy;—are the payments made, subsequently to the partner's death, by the survivors to be applied in reduction of the balance due to the customer at that period, so as to discharge the estate of the deceased partner *pro tanto*, or are they to be considered as exclusively parts of the dealings between the survivors and the customer?

Now this question has been settled, once for all, by Sir William Grant, Master of the Rolls, in a decision which has been universally followed and acted upon; and in the case of a banking account where all the sums paid in form one blended fund, the parts of which have no longer any distinct existence, the rule may be stated to be as follows:—presumably, it is the sum first paid in that is first paid out, and it is the first item on the debit side of the account that is discharged or reduced by the first item on the credit side.

Indeed, this is the principle on which all accounts current, and especially cash accounts, are settled; and any other mode (as the Master of the Rolls shows) would lead to extravagantly unreasonable results (*a*).

If the customer intended that this usual mode of dealing should be altered or departed from in any way, it is incumbent on him to signify his intention to that effect to the bankers, for the rule in *Clayton's case* is not applicable when it can be gathered, either from the course of dealings between the parties or from the debtor when making the payment, that such rule is not intended to be applicable (*a*).

There is no difference between the Courts of Law and the Courts of Equity on this question of appropriation: both adopt the same principle as the ground of their decisions (*b*). The same rule applies, moreover, as against a surety: for even in that case, the earlier items of the account will be those to which the earlier payments are to be regarded as appropriated (*c*). So, in the case of a trustee paying trust money into his banker's account, thereby mixing this money with his own, subsequent sums drawn out by him will be attributed to the earliest items on the credit side of his account for the time being, and the trust money will, in this way, in its turn be considered as drawn out, whether or not the result be that a balance remains of his own monies (*d*). The same principle being applicable to dealings between a company and its bankers, it follows that a former shareholder, who has transferred his shares, is

(*a*) *Clayton's case*, 1 Mer. 608—610, 611; *City Discount Co. v. McLean*, L. R., 9 C. P. 692; 43 L. J., C. P. 344; 30 L. T. 883; *Ex parte Smith*, 25 W. R. 760. The customer has a right to resort for payment of what is due to him out of the estate of a deceased partner to that estate, without regard to the state of the account, as between the deceased and the surviving partners. *Devaynes v. Noble*, 2 Russ. & M. 495.

(*b*) *Bodenham v. Purchas*, 2 B. & A. 45. See *Simson v. Ingham*, 2 B. & C. 72; *Williams v. Griffith*, 5 M. & W. 300; *Laing v. Campbell*, 36 Beav. 3; *Hooper v. Keay*, 1 Q. B. D. 178; 34 L. T. 574; *Ex parte Smith, In re Hamilton*, 25 W. R. 760.

(*c*) *Williams v. Rawlinson*, 3 Bing. 71; see also *Kinnaird v. Webster*, 10 Ch. D. 139; 48 L. J., Ch. 348.

(*d*) *Brown v. Adams*, 39 L. J., Ch. 67; L. R., 4 Ch. App. 764; *Pennell v. Deffell*, 4 De G., M. & G. 372.

exonerated from contributing to the company's debt to its bankers, if before the winding-up sufficient money has been paid to the bank to cancel what was due to the bank when such shareholder ceased to be a member (*e*).

Distinct accounts.

*Distinct Accounts.*—It is necessary, however, to keep in mind that where there are distinct accounts kept, and the customer is overdrawn and makes a general payment, without specifically appropriating it *at the time*, and there is no course of dealing, or other circumstances, showing clearly how he must have intended to appropriate the payment (*f*), this is not a case within the rule we have been stating, which applies only in case of a running unbroken account, but one in which the banker may apply the payment to which account he pleases (*g*); and he is not bound to do it instantly, but may take a reasonable time (*h*). On the other hand, if the customer is indebted to the banker on several accounts and pays in money, he, the customer, has a right to say *at the time* to which debt the payment shall be applied (*h*).

A municipal corporation kept an account at a banking house. Afterwards, becoming invested with the functions of a local board of health, the corporation opened a second and separate account with the bankers. The bankers stopped payment, there being then due from the corporation, on account of its municipal affairs, a large sum of money, and a similar amount from the bank to the corporation, in respect of the local board of health account: it was held, that the corporation was entitled to set off these claims one against the other, for although the accounts were separate, the corporation was a debtor in the

(*e*) *Devonport and South Devon Steam Flour Mill Co., In re Bateman's case*, 42 L. J., Ch. 577.

(*f*) See *Wilson v. Hirst*, 4 B. & Ad. 766; *Stoveld v. Eade*, 4 Bing. 154; *Lysaght v. Walker*, 5 Bligh, N. S. 1; *Brown v. Anderson*, 2 Moore, P. C. 245.

(*g*) *Simson v. Ingham*, 2 B. & C. 72, 75. Entry in the customer's books is not evidence of the appropriation by him. *Manning v. Westerne*, 2 Vern. 606.

(*h*) *Ibid.*

first account and a creditor in the second and in the same right (*i*).

When a customer has opened with his bankers separate accounts specially headed with the names of the trusts to which the moneys paid into those accounts belong, the bankers are not at liberty upon the bankruptcy of the customer to apply those moneys in payment of the balance due to them upon the customer's overdrawn private account (*k*).

Thus, a county treasurer used to pay the county moneys into Bacon's Bank, but kept his private account at the National and Provincial Bank, and carried over the police rates to this account by cheques drawn on Bacon's Bank: in 1869 he opened a separate account with the National and Provincial Bank, headed "Police Account," and some of the items to his credit in this account could be traced as having come from county funds, but most of them could not: the cheques which he drew upon it were all headed "Police Account," and drawn only for county purposes: for the purposes of interest the National and Provincial Bank treated the accounts as one account, the interest on the balance in his favour being carried to the credit of his private account: at the time when the police account was opened, the manager of the bank knew that he was county treasurer and understood that he had been in the habit of paying county moneys into the bank: in April, 1870, he absconded, his private account being overdrawn, and the police account being in credit:—the court held, that the bank was not entitled to set off the one account against the other, but that the county magistrates were entitled to recover the balance standing to his credit on the police account (*l*).

When a partnership has been dissolved and one or more of the partners continue the business, and a creditor of the

(*i*) *Pedder v. Preston (Mayor, &c.)*, 9 Jur., N. S. 496; 11 C. B., N. S. 535; 31 L. J., C. P. 291.

(*k*) *Ex parte Kingston, In re Gross*, L. R., 6 Ch. 632; 40 L. J., Ch. 91.

(*l*) *Ibid.*

firm continues the credit, and blends together his accounts with the old firm and the new, payments made by the new firm on account must be applied in the first instance to the satisfaction of the old firm (*m*).

This rule holds good not only with respect to payment actually entered in the blended account but also with respect to any sum of money paid without specific appropriation after the blended account has been sent in.

The plaintiffs supplied goods to K. & D., who were in partnership, and they gave the plaintiffs their acceptance for 132*l.*, the amount. Before the bill was due K. & B. dissolved partnership, and gave notice to the plaintiffs with the intimation that K. would carry on the business, and would receive and pay the accounts due to and from the old firm. The plaintiffs continued to supply K. with goods, and he gave them his acceptance for the amount, and also paid them several sums on account, but without any specific appropriation. After some months the plaintiffs sent in their account to K., beginning on the debit side with the acceptance for 132*l.*, and, after giving him credit for the sums paid, showing a balance against K. of 92*l.* After this K. paid the plaintiffs two other sums, which, with the sums already paid, amounted to more than 132*l.* The plaintiffs having sued K. and D. on their acceptance for 132*l.*, D. pleaded payment:—Held, that, the plaintiffs having sent in the statement to K. treating the whole as one account, the subsequent payments must be appropriated to the earlier items of the account; and consequently that the plea was proved (*m*).

The same principle applies when the partnership expires: thus, Brooke, a lieutenant-colonel in the army, employed one Gilpin, as army agent and banker, to receive his pay and allowances, and also dividends on his stock, and other moneys on his account, and from time to time to make payments to him, or his order, for which purpose he was

(*m*) *Hooper v. Keay*, 1 Q. B. D. 178; 34 L. T. 574; 24 W. R. 485.

in the habit of drawing on Gilpin, who, from time to time, sent in his account to the employer. Brooke continued to employ Gilpin in this way from some time before the year 1807 down to the year 1819, when Gilpin became bankrupt; no rest was made or balance struck in the account after the 1st of July, 1816, and during the whole period of the account there was always a considerable balance due to Brooke. On the 24th of September, 1807, Gilpin had entered into partnership, *for a period of ten years*, with one Enderby, but the business continued to be transacted in the name of Gilpin alone, and Brooke had no notice or knowledge of the partnership until after the bankruptcy of Gilpin; and the receipts and payments prior and subsequent to the 24th of September, 1817, when the partnership expired, formed part of one general account. Then, on Brooke bringing an action against Enderby and Gilpin, to recover the balance due to him at the expiration of the partnership, the Court held that Enderby (Gilpin having pleaded his bankruptcy) was entitled to consider any sums paid by Gilpin after the expiration of the partnership, as being paid in reduction of the balance then due to Brooke, and might take credit for them, without giving credit to Brooke for any sums received after the expiration of the partnership by Gilpin on account of Brooke (n).

The acting member of a partnership has an implied authority to assent to the transfer of their account from one bank to another, without an express assent of the other partners. Upon such transfer, however, the actual amount due is alone transferred. Where the balance due from the firm at the time of the transfer has been overtopped by subsequent payments to their credit, as to which there has been nothing to take the case out of the ordinary principle of appropriation of payments to the earlier items, the banker has no right of action in respect of the balance

(n) *Brooke v. Enderby*, 2 B. & B. 70.

existing at the time of transfer, which has thus become extinguished, but only in respect of the balance subsequently become due (*o*).

Legal items.

*Legal Items.*—If there is a running account between the customer and the bankers, and the bankers make large advances to him, part of these advances arising out of illegal and part out of legal transactions, and the customer from time to time deposits bills and makes payments, without any specific appropriation or any settlement of the account: it will be held, that the payments must be applied to the reduction of the earlier items of the account, and to the legal, and not the illegal, part of the demand (*p*). So bankers may apply subsequent unappropriated payments to debts barred by the Statute of Limitations (*q*).

Specific appropriation of payment.

*Specific Appropriation.*—When money is paid in on a specific account by the customer, and accepted by the banker, the money cannot be appropriated to any other account or debt (*r*). Therefore, where a customer paid a sum of money to a country banker, with instructions to remit 500*l.*, part of the sum, to a London banker, to meet the acceptances of the customer, and the banker on the same day sent several bills to a bill broker, and directed the London banker to meet the acceptances, and on the next day the country banker stopped payment; it was held, that the sum of 500*l.* was specifically appropriated, and that the customer was entitled to recover it back in full (*r*).

(*o*) *Beal v. Caddick*, 2 H. & N. 326; 26 L. J., Exch. 356.

(*p*) *Ex parte Randleson*, 2 Deac. & C. 534; *Wright v. Laing*, 3 B. & C. 165.

(*q*) *Williams v. Griffith*, 5 M. & W. 300; *Ashby v. James*, 11 M. & W. 542.

(*r*) *Farley v. Turner*, 26 L. J., Chanc. 710. See also *Hill v. Smith*, 12 M. & W. 618; *Barned's Banking Co., In re, Ex parte Massey*, 39 L. J., Ch. 635; 22 L. T. 853; *Johnson v. Roberts*, L. R., 10 Ch. 585; 44 L. J., Ch. 678. See *ante*, p. 138.

But when a person pays money into a bank to be applied in a specific manner, and the banker stops payment before taking any step towards applying it to the purpose, the payer cannot recover the money paid, but has merely a right of proof as a general creditor on the banker's estate (s).

A solicitor in the country received from a client a large sum of money, which was to be paid by him into the Court of Chancery on the client's account. The solicitor obtained a bill for the sum from a country banker, and remitted it to his bankers in London, without stating the reason for which the amount had been paid to him. At the same time he was indebted to his bankers in 450*l.*, for which they held securities, and as to which they kept an account separately from his general account. The solicitor died, and a few days afterwards the bill became due and was paid, and the bankers carried the amount to his general account. The bankers, for some time after they had received notice from the client of the circumstances under which the amount of the bill had been paid to the solicitor, continued to keep the accounts separately, but ultimately deducted the 450*l.* from the proceeds of the bill, and paid the balance to his executrix. The Vice-Chancellor held, that as there was no agreement binding the bankers to keep separate accounts as to the 450*l.* and the amount of the bill, and as they had no notice till after the amount was received of the purpose for which it was intended to be applied, the client was not entitled to recover from them any part of the proceeds of the bill (t).

(s) *In re Barned's Banking Company, Massey's case*, 39 L. J., Chanc. 635.

(t) *Grigg v. Cockey*, 1 Sim. 439.

## CHAPTER XXVII.

## LIEN.

THE general lien of bankers is part of the law merchant, to be judicially noticed like other parts of that law (*a*).

Unless there be an express contract, or circumstances showing an implied contract inconsistent with the principle of lien, bankers have a general lien on all securities deposited with them, *as bankers*, by their customers (*b*).

*Securities for Special Purposes.*—A banker's lien does not attach on securities placed in his hands for a special purpose, *e. g.*, where exchequer bills are deposited, in order that he may receive the interest on them and get them exchanged for fresh bills; for such special purpose is inconsistent with the notion of a general lien. It is on this ground, that if a customer goes to his banker requesting him to get a bank post bill for the purpose of transmitting into the country the sum of 1,000*l.*, which sum he hands over to him in bank notes, the banker, unless he expressly states that he receives the notes only subject to his lien, has no right to retain or apply them to any other purpose than that for which he received them (*c*).

Where a customer deposited with his bankers a deed of conveyance, comprising two distinct properties, giving to

(*a*) *Brandao v. Barnett*, *infra*; *Bock v. Gorrisen*, 30 L. J., Chanc. 39; 2 De G., F. & J. 434; *Jones v. Peppercorne*, Johns. 430; 28 L. J., Chanc. 153.

(*b*) *Brandao v. Barnett*, 12 C. & F. 787; *London Chartered Bank of Australia v. White*, L. R., 4 App. Ca. 413; *Misa v. Currie*, 1 App. Ca. 544; 45 L. J., Ex. 414; *Leese v. Martin*, L. R., 17 Eq. 236; 43 L. J., Chanc. 193; *Kinnaird v. Webster*, L. R., 10 Ch. D. 139; 48 L. J., Chanc. 348; *Ex parte Manchester and County Bank*, L. R., 3 Ch. D. 481; 45 L. J., Bank. 149; *Ex parte Adam*, L. R., 2 Ch. App. 63; *In re Williams*, 3 Ir. Rep., Eq. 346.

(*c*) *Brandao v. Barnett*, *supra*. For "liens" (so-called) arising by special agreement or equitable mortgages by deposit, see further, post.

them at the same time a memorandum pledging one of the properties as a security for a specific sum advanced, and also for his general balance, it was decided that, as the deposit of the deed of conveyance was for a special purpose of giving a security upon one property only, the bankers could not claim a general lien, by virtue of the custom of bankers, on the other property (*d*).

If a customer deposits securities with his bankers, to indemnify them to the extent of 1,000*l.*, then advanced by them, and afterwards becomes indebted to them in an additional sum of 500*l.*, on his running account, it would seem that they have no lien on these securities beyond the 1,000*l.* and interest (*e*).

A customer kept three accounts with his banker, called the general account, the loan account, and the discount account. The loan account was from time to time fed by the deposit of securities, which were ordinarily expressly deposited to secure the general balance. The customer wrote a letter to the banker, advising him that he had charged his account with 10,500*l.*, and stating that as by this time his credit with the banker would no longer afford a margin to that extent, he hastened to hand him by way of collateral security certain bills of exchange, which he specified; the Court held, that this did not exclude the banker's right to a general lien on the bills in respect of the balance due on the general account; for, as between banker and customer, whatever number of accounts are kept in the books, the whole is really but one account, and it is not open to the customer, in the absence of some special contract, to say that securities which he deposits are only applicable to one account (*f*). So even, if there are several accounts kept at several branches, such accounts can be treated as one, and if on the general balance the

(*d*) *Wylde v. Radford*, 33 L. J., Chanc. 51.

(*e*) *Vanderzee v. Willis*, 3 Bro. C. C. 21; *Zinck v. Walker*, 2 W. Bl. 1154; see *Ashton v. Dalton*, 2 Collyer, 565. See p. 183.

(*f*) *In re European Bank*, L. R., 8 Ch. 41; 27 L. T., N. S. 732.

customer is shown to be indebted thereon, the banker's lien will apply (*f*).

*Plate*.—Bankers have no lien for the balance of their account against a customer, on his plate deposited in his chest with them for safe custody (*g*).

*Trust or Property of Third Persons*.—Nor can bankers carry into effect any lien which they may *primâ facie* have upon securities deposited with them, which are, in fact, trust deeds. Thus, if a customer deposits title deeds, as a security for advances, and the property comprised in the deeds is subject to a trust, *in breach of which the deposit is made*, then, although the bankers have no notice of the trust, it must prevail against their lien (*h*), unless there is negligence of such a character, on the part of the *cestui que trust*, as to deprive him of his right to the trust fund (*i*).

One of the trustees of a fund held certain shares in a banking company, in his own right, and dealt with and purchased shares therein to a considerable extent. A portion of the trust fund was invested in shares in his name. There was no distinguishing mark by which the individual shares could be traced, the whole being in the nature of capital, expressed by terms of quantity. The trustee then agreed to assign a certain number of the shares standing in his name to the banking company, as security for repayment of advances which had been made to him by them; but no formal transfer was ever made. He then became bankrupt, not having in his ownership at the time a sufficient number of shares to satisfy the trust and

(*f*) *Garnett v. McKewan*, L. R., 8 Ex. 10. See also *Prince v. Oriental Banking Company*, 3 App. Cas. 325.

(*g*) See *Ex parte Eyre*, 1 Ph. 235; 12 C. & F. 694, 797; *per* Lord Campbell, *Brandao v. Barnett*, 12 C. & F. 809; and *O'Connor v. Majoribanks*, 4 M. & G. 435; *Leese v. Martin*, L. R., 17 Eq. 224.

(*h*) *Manningford v. Tolman*, 1 Collyer, 670.

(*i*) *Stuckhouse v. The Countess of Jersey*, 30 L. J., Chanc. 421. See as to what notice will affect lien, *Berry v. Gibbons*, L. R., 8 Ch. 747; *Maxfield v. Burton*, L. R., 17 Eq. 15; *Cavander v. Bulteel*, L. R., 9 Ch. 79; *Farhall v. Farhall*, L. R., 7 Eq. 286; see also p. 174.

also to enable him to execute the agreed assignment to the banking company.

Here the banking company was held to have no lien on any of the shares which A. had held in trust; for though the shares so held, being originally purchased with trust money, possibly might have been dealt with by sale and repurchase, the trustee must still be considered as holding for the purposes of the trust the same number of shares, out of a larger number which stood in his name at the time of the bankruptcy: and of the two equities, that of the *cestuis que trust*, and that of the banking company—no actual assignment of the shares having been made, pursuant to the agreement—the former must prevail (*j*).

Bankers have no lien upon railway stock deposited or pledged with them by a customer, after they receive notice that the stock is the property of another person (*k*).

The trustees of a trust fund had an account with a banking company, as such trustees. One of the *cestuis que trust* had a private account with them, which was much overdrawn; upon their agreeing not to press for the reduction of the balance against him, he offered to give them a lien on the moneys coming to him in respect of his share of the trust fund: and to this they agreed. Accordingly, he addressed a letter to one of the trustees, authorizing and requesting him to pay to the credit of his (the *cestui que trust's*) account with the bank such sums as might be awarded to him out of the trust fund. It was held that this letter gave the bankers a valid lien upon the proceeds of the fund, and, being intended by both parties, at the time it was given and received, to be irrevocable, must be considered in equity to be so to all intents and purposes (*l*).

(*j*) *Murray v. Pinkett*, 12 C. & F. 764.

(*k*) *Locke v. Prescott*, 32 Beav. 261.

(*l*) *Ex parte Steward*, 3 M., D. & De G. 265. See *Pannell v. Harley*, 2 Collyer, 241; *Somerset v. Cox*, 10 Jur., N. S. 351.

*Bills of Exchange, &c.*—If a customer lodges undue bills of exchange in the hands of his banker and draws upon them for any money he wants in advance, the banker charging no interest on these advances, but selecting out of the bills such as were nearest in amount to the sum advanced, and discounting them, and debiting the customer with the amount of such discount in his account, but without any special agreement to that effect, then there is nothing, in these circumstances, to invalidate the banker's right of lien for his balance, on all *other* bills placed in his hands by the customer besides those that he discounts (*m*). It seems to be universally true, that a customer cannot get back paper securities in his banker's hands, without paying the balance against him, unless there is some special contract between the banker and the customer inconsistent with the general lien (*n*).

S. discounted with a bank bills of exchange drawn against goods consigned to India, handing over the bills of lading as security. The bank carried a part of the discount value of the bills to a suspense account till advice of the payment of the bills, to form a margin or an additional security against a fall in the price of the goods, and gave accountable receipts for such margins. S. deposited these receipts with A., who gave notice to the bank. The bills having been dishonoured, the bank was held entitled to a lien on the marginal receipts for such sums as were actually due and payable to the bank by S. at the times when the marginal receipts respectively became payable, in respect of liabilities contracted before notice of the deposit was received, but not to a lien for sums not actually due (*o*).

(*m*) *Davis v. Bowsher*, 5 T. R. 488. See as to lien on undue bills, ante, p. 146.

(*n*) *Per* Lord Campbell, in *Brandao v. Barnett*, 12 C. & F. 787; and Wood, V.-C., in *Jones v. Peppercorne*, 5 Jur., N. S. 140; 28 L. J., Chanc. 153.

(*o*) *Jeffryes v. The Agra and Masterman's Bank*, 35 L. J., Chanc. 686.

A banker, who has discounted bills for a customer, has no implied lien on that customer's cash balance during the currency of the bills (*p*).

The rule is so strong as regards the lien on securities, which come into the banker's hands *without being appropriated to any special purpose*, or entrusted to them for safe custody or the like, that it attaches on bills and notes payable to bearer, or other negotiable instruments which pass by delivery, although the customer depositing them was not the real owner, and had no authority to saddle the property in them with a lien, provided the bankers, at the time of the deposit, have no notice of any equitable trust or title attaching to these securities (*q*).

*Securities left by Mistake.*—Nor has a banker any lien on securities left by mistake or casually at the bank, upon the occasion of an application to him to advance money on them, which he had refused to do (*r*).

*Partnerships.*—Bankers have no lien on the deposit of a partner, on his separate account, for a balance due to the bank from the firm (*s*). A firm had an account with a bank and one of the firm had a separate account with the same bank. Upon the bank discounting a promissory note of such partner, he deposited with the bank certain shares as a security for the same, or for any sums of money in which he might then be or might thereafter become indebted to them. The shares afterwards became the property of the firm, which became bankrupt largely indebted to the bank; the bank was held not entitled to hold the shares as a security for the joint debt, but for the separate debt only of the partner depositing the shares (*t*). At the commencement of the bankruptcy of the firm of

(*p*) *Bowes v. Foreign and Colonial Gas Company*, 22 W. R. 740.

(*q*) *Barnett v. Brandao*, 6 M. & G. 630. See also *Misa v. Currie*, 1 App. Cas. 544; 45 L. J., Ex. 414; *Rumball v. Metropolitan Bank*, L. R., 2 Q. B. D. 194; 46 L. J., Q. B. 346.

(*r*) *Lucas v. Dorrein*, 7 Taunt. 279.

(*s*) *Watts v. Christie*, 11 Beav. 546.

(*t*) *Ex parte M'Kenna*, 30 L. J., Bank. 20. See also *Ex parte Manchester and County Bank*, L. R., 3 Ch. D. 481.

A. and W. there were standing registered in the name of A. shares in a bank, whose articles of association provided that all the shares of every shareholder should be subject to a lien in favour of the bank for any debt due to the bank for him alone, or jointly with any other person. The shares in question, which were originally the private property of A., became partnership assets when he entered into partnership with W., but the bank had no notice that anyone but A. was interested in the shares. The bank sought to prove against the joint estate of the firm for a large debt contracted after the shares became partnership assets:—Held, that the lien of the bank on the shares was a security on the joint estate, and that the bank could prove for the amount of their debt without deducting the value of their shares.

*Realizing Lien.*—Little has been decided to illustrate how the law provides that the banker is to realize, and make productive, his lien on securities.

In case of any negotiable security which comes to his hands on account of a customer, to whom the banker is in advance, he has, as has been said, a lien or power of detention; and in order to make such power productive, he may put the negotiable instrument in suit (*u*), and recover upon it so much as will cover the balance due to him from the customer (*x*). With respect to other securities it is submitted that, in the case of a mere lien (as distinguished from an equitable mortgage), a banker has no right of sale (*y*).

But, instead of advancing their remedy, bankers will destroy their right of lien, if after a lien has been established they take a security, *which is payable at a distant day*, for the debt (*z*).

(*u*) *Bolland v. Bygrave*, R. & M. 271; *Bosanquet v. Dudman*, 1 Stark. 1.

(*x*) *Scott v. Franklin*, 15 East, 428. The lien is only, at most, co-extensive with the balance due; *per Eyre, C. J.*, *Bolton v. Puller*, 1 B. & P. 546.

(*y*) See *Donald v. Suckling*, L. R., 1 Q. B. 585.

(*z*) *Cowell v. Simpson*, 16 Ves. 278; *Hewison v. Guthrie*, 3 Scott, 311; 2 Bing. N. C. 755.

## CHAPTER XXVIII.

## PARTNERSHIPS AT COMMON LAW.

MANY questions arise in banking transactions which are governed by the rules applicable to partnerships at common law. For this purpose it will be well to consider shortly what is the law relating to such partnerships.

Cases respecting copartnerships in banking, under the 7 Geo. IV. c. 46, as they stand upon different and special grounds, will be treated apart; and the same will be done with respect to joint-stock banking companies and chartered and limited banking companies.

*Liability of Firm for Partner's Contracts.*—Every partner, acting on behalf of the firm, can bind his co-partners by contracts entered into by him, though without the authority of such co-partners, provided the contract comes within the scope of the ordinary business of the firm, and that notice of such want of authority was not brought to the knowledge of the party with whom the contract was made. When the contract is one which the partner is authorized to make by the others, it need hardly be said they will be bound thereby.

An acting partner has implied authority to assent to the transfer of their account from one banker to another, without the express assent of the rest of the firm, but it is doubtful whether the acting partner has such authority to borrow a sum from the transferee of the account, in order to pay off the bank from which the transfer was made, or those who constituted it (*a*). But one partner has no authority, in the absence of evidence of custom, to bind

(*a*) *Beal v. Cuddick*, 26 L. J., Exch. 356.

his co-partner by opening a banking account in his own separate name, instead of the name of the partnership, although the account may be for partnership purposes, and consequently the bankers will not be entitled to recover against both partners the overdrawn account (*c*).

So, again, supposing the partnership is a trading partnership, a partner can bind his co-partners by accepting, drawing or indorsing bills of exchange, though he be expressly forbidden by the firm to enter into such contracts (*d*). But where the firm is not a trading one, as in the case of a firm of solicitors, there is no implied authority for one of the partners to bind the others by drawing, accepting or indorsing such instruments (*e*).

A partner has no implied authority to bind his co-partners by a submission to arbitration (*f*), nor, as a rule, by executing a deed (*g*), nor by giving a guarantie (*h*).

Partners cannot effectually pledge partnership property, so as to make it available for their own private debts (*i*).

*Liability of Co-partners for Partner's Wrong.*—A firm is liable for injuries or loss resulting from the wrongful act or negligence of one of their number, provided he was acting within the ordinary course of the business of the firm. In the same way, a firm is responsible for the misapplication by a partner of money or property received by him, if in so receiving it he was acting within the ordinary apparent authority of his firm; or, again, if money or property has been actually received in the custody of the firm, they are responsible should one of the partners misapply it.

(*c*) *Alliance Bank v. Kearsley*, 40 L. J., C. P. 249; L. R., 6 C. P. 433; 24 L. T. 552.

(*d*) *Kirk v. Blorton*, 9 M. & W. 284; *Forbes v. Marshall*, 11 Ex. 166; and see ante, p. 30.

(*e*) *Garland v. Jacomb*, L. R., 8 Ex. 216.

(*f*) *Adams v. Bankart*, 1 Cr., M. & R. 681; *Thomas v. Atherton*, 10 Ch. D. 185; 48 L. J., Chanc. 370.

(*g*) *Berry v. Jackson*, 4 T. & R. 516.

(*h*) *Duncan v. Lowndes*, 3 Camp. 481.

(*i*) *Ex parte Snowball, In re Douglas*, L. R., 7 Ch. 534; 26 L. T. 894.

A lady having an account with a banking house, consisting of several partners, was advised by one of them to dispose of certain Dutch bonds of which she was possessed, and to place the proceeds on better security; the partner also suggesting that the money should be lent to his son. In this plan the lady acquiesced, in consequence of the great confidence she had in the firm, and gave the partner a cheque upon the bank for the money, payable to a third person named, or bearer, and received a promissory note for repayment with a guarantie from the partner, who afterwards absconded. The security subsequently proved worthless.

On the lady filing a bill in equity against the remaining partners, it was held that they were *not* liable for the loss, because the transaction was not within the scope of a banker's business, and was not recommended or sanctioned by the other partners (*j*).

The owner of certain exchequer bills deposited them with a firm of bankers, and subsequently one of the partners sold them without the knowledge of their owner or of the other partners. The proceeds were innocently applied by the bank to its own use:—Held, that the bank was liable (*k*).

One of the partners in a bank caused stock, belonging to a customer of the bank, to be sold out, by means of a power of attorney, which he forged. The proceeds of the stock were paid to the account of the banking firm, at the house of the bank's agents, and were appropriated by the partner, who was afterwards found guilty of other forgeries and hanged. His partners were, in fact, ignorant of the fraud, but might have known it by the exertion of common diligence. The customer was held entitled to maintain an action against the partners for the amount (*l*).

(*j*) *Bishep v. Countess of Jersey*, 2 Drew. 143; 23 L. J., Chanc. 483.

(*k*) *Clayton's case*, 1 Mer. 575.

(*l*) *Marsh v. Keating*, 2 Cl. & F. 250. In this case the judgment went more or less on the ground that the partners might have known of the fraud, but, had it been otherwise, they would still have been liable, inasmuch as the selling, through their broker, stock belonging to their

So, it has been laid down, that if one partner in a banking house colludes with a member of a trading firm in a transaction connected with the business of the bank, the banking firm is liable to the trading firm for any damages which the latter may have suffered by reason of such a transaction. Longman & Co., booksellers, banked with Pole & Co. On a certain day, Hurst, a partner in Longman's house, sent cash to the bank in order to take up three bills of exchange accepted by him in the name of the firm and coming due next day. The bills were taken up, but by Hurst's order were not entered in the books of Longman & Co. About the same period, it appeared in evidence, Downes, a partner in the bank, told one of the clerks that a bill of Longman's would come in on such a day, which was to be paid and given over to him (Downes), and that he was to debit Hurst with it in the *note book*, in which private transactions were entered, so that it might not go into the ledger. Downes soon afterwards gave a similar direction respecting another bill of the same kind; and these bills were entered into the *note book* accordingly, and the cash payments were entered in the same book to Hurst's credit, and consequently no trace of these transactions appeared, either in the *pass book* of the bankers or in the *cheque book* of Longman & Co. Hurst afterwards retired from the partnership, receiving the full amount of his capital, and became bankrupt. Longman & Co. were subsequently obliged to pay bills accepted by him, in the name of the firm, to a very large amount. An action was considered to be clearly maintainable by Longman & Co. against Pole & Co., in respect of the damages arising to the former out of the collusion of one of the latter firm with Hurst (*l*).

customers and receiving and remitting the proceeds was within the scope of the firm's business. See also *Blair v. Bromley*, 2 Ph. 354; *St. Aubyn v. Smart*, L. R., 3 Ch. 646; *Plumer v. Gregory*, L. R., 18 Eq. 621; *Thomas v. Atherton*, 10 Ch. D. 185; 48 L. J., Ch. 370; *Reed v. Bailey*, 3 App. Cas. 94; 47 L. J., Ch. 161; *Lacey v. Hill*, 4 Ch. D. 537; *Plumer v. Gregory*, 31 L. T. 7.

(*l*) *Longman v. Pole*, Danson & L. 126; M. & M. 223.

*Defence in Actions by Partners.*—So, where there is a good defence against one partner that defence is equally available against the others; thus, where one of several partners in a banking house drew a bill in his own name upon a third party, who accepted it, upon condition that the drawer should provide for it when due, the firm was adjudged to be bound by this act of the partner, and they were not allowed to sue the acceptor; for the partner, not having performed the condition on which the acceptor accepted, could not have done so, and they could not be in a better position than he was (*m*).

Where a customer gave a promissory note to his bankers on account of a supposed balance due to them (there being, however, a mistake as to this), and the bankers indorsed the note to another firm, consisting of some of the partners of the banking house, he was held at liberty to set off the debt due to him from his bankers, in an action brought against him on the note by the firm who held it, the knowledge of one of the partners in such firm being deemed equivalent to notice to all, and, therefore, that they were affected by the state of the accounts between him and his bankers (*n*).

*Joint and several Liability of Partners.*—A partnership contract, being *in form* joint, was held in law to create only a joint obligation, which consequently attached exclusively upon the survivors (*o*). But it is now held in equity, that partnership debts are joint and several (*p*); and in a suit by a creditor of a firm against the representatives of a deceased partner and the surviving partner, the creditor is entitled to satisfaction out of the assets of the deceased partner, whether the surviving partner is or is not insolvent (*p*).

(*m*) *Brandon v. Scott*, 7 E. & B. 234; *Astley v. Johnson*, 5 H. & N. 137; *Richmond v. Heapy*, 1 Stark. 202.

(*n*) *Puller v. Roe*, Peake, 197.

(*o*) *Sleech's case*, 1 Mer. 564; Story on Partnership, 361; *Richards v. Heather*, 1 B. & A. 29.

(*p*) *Wilkinson v. Henderson*, 1 M. & K. 581; *Bishop v. Church*, 2 Ves. sen. 371; *Burn v. Burn*, 3 Ves. 573; *Beresford v. Browning*, 1 Ch. D. 30; 45 L. J., Ch. 36; *Kendall v. Hamilton*, 3 C. P. D. 403; 4 App. Cas. 504.

Goodwill.

*Death of Partner.*—So in equity partners are looked upon not as being joint owners of the partnership property, but as owners or tenants in common; and, consequently, on the death of one of them his share does not survive to the others, but forms part of his personal estate (q). In the same way on the death of one of the partners, there is no survivorship of the goodwill of the business, but it is looked upon merely as an asset; and, if it is saleable, must be sold (r). Where a partnership, at the time of the death of one of the partners, is unsaleable, and the surviving partner carries on and improves the business, and subsequently sells it, in administering the estate of the deceased partner the surviving partner is only chargeable in respect of the value of the business at the date of the other partner's death (s). In the case of bankers one year's average net profits has been considered a fair assessment of the goodwill of the business (t).

*Partnerships in other Firms.*—The rule as to partnerships in other firms is thus stated by Mr. Justice Lindley, in his work on Partnership, p. 341, "If there are two firms with one name, a person who is member of both firms is liable to be sued on all bills bearing that name, and binding on either firm. But if a member of only one of the two firms is sued on the bills his liability will depend first on the authority of the person giving the bill to use the name of the firm of which the defendant is a member; and, secondly, on whether the name of that firm has in fact been used. If both these questions are answered in the affirmative he will be liable, but not otherwise."

Thus, A., B. and C. traded under the firm of A. and C.

(q) *Barber, Ex parte*, L. R., 5 Ch. 687; *Davies v. Games*, 12 Ch. D. 813; *Broughton v. Broughton*, 44 L. J., Ch. 526; *In re Simpson*, L. R., 9 Ch. 572; *M'Clean v. Kennard*, L. R., 9 Ch. 336; 43 L. J., Ch. 323.

(r) *Bradbury v. Dickens*, 27 Beav. 446; *Wedderburn v. Wedderburn*, 22 Beav. 104.

(s) *Broughton v. Broughton*, *supra*. See further *Simpson v. Chapman*, 4 De G., Mac. & G. 154; *Smith v. Everitt*, 27 Beav. 446.

(t) *Mellersh v. Kean*, 28 Beav. 453.

in the cotton business, and A. and B. traded as partners alone under the same name in the business of grocers, in which latter business they became indebted to D., and gave him their acceptance, which they were unable to take up when due. In order to provide for it, they indorsed to D. in the common firm of A. and B. a bill of exchange, which they had received in the cotton business in which C. was interested, but such indorsement was unknown to C. :—Held, that such indorsement in the firm common to both partnerships of a bill received by A. and B. in the cotton business bound C. (*u*).

*Change of Firm and Substitution of Liability.*—In the event of a change of firm, the old firm still remain liable for debts contracted before the change, unless their creditor agrees to discharge the old and to look to the new firm for payment, or at least does some act equivalent to such an agreement (*x*). Such an agreement does not require a consideration (*y*).

The mere fact of a creditor's receiving interest from the new firm, for a debt due from the old one, is not necessarily an adoption by him of the new firm as his sole debtors.

Thus, if the change is occasioned by death, and the creditor of the old firm receives interest for his debt from the new firm, it is quite clear this fact by itself will not discharge the estate of the deceased partner (*z*).

If the change is occasioned by the retirement of a partner, the same holds good (*a*).

(*u*) *Swan v. Steele*, 7 East, 210. See also *Hall v. West*, cited in Lindley, 343. *Baker v. Charlton*, Peake, 111, may now be considered no longer law.

(*x*) See remarks by Buller, J., in *Tatlock v. Harris*, 3 T. R. 180; *Bilborough v. Holmes*, 6 Ch. Div. 255, ante, p. 127.

(*y*) *Thompson v. Percival*, 5 B. & Ad. 925; overruling *Lodge v. Dicus*, 3 B. & A. 611. See *Bank of Scotland v. Christie*, 8 C. & F. 214; see also *Lyth v. Ault*, 7 Ex. 669.

(*z*) *Daniel v. Cross*, 3 Ves. 277; *Blew v. Wyatt*, 5 Car. & P. 397; *Gough v. Davies*, supra.

(*a*) *Gough v. Davies*, 4 Price, 200. See also *Kirwan v. Kirwan*, 2 Cr. & M. 617; *Crawford v. Cocks*, 6 Ex. 287.

The mere fact of the creditor's treating the continuing partners as his debtors does not, of itself, show that he therefore means to surrender his rights against the retiring partners (*b*).

The fact of the creditor's receiving a *new* security from the continuing partner affords strong evidence of his consent to a substitution of liability (*c*). So, if he agrees to look to the new firm, and for a long period makes no demand on the old firm (*d*).

If, upon a change of the members, the balances of the customers of the old partnership be transferred from the books of the old firm to those of the new firm, without any special agreement as to the manner in which payments made by the customers were to be applied, but under a general understanding amongst themselves that the new house was to be responsible for the debts due from the old: the new house cannot appropriate payments made by customers, since the change, in their own favour, but will be bound to apply them in liquidation of the balances due from the old firm (*e*).

A., a partner in a banking house, and also in business separately as a trader, died, and in a suit by his separate creditors against his executors the bankers claimed to prove the balance due to them from A.; and they were held to be entitled to do so, although, as the partnership included A. they could not have sued him at law in his separate capacity; and the reason is, because, when an account is decreed the equitable creditors have a right to be satisfied, and no distribution of assets can take place until the accounts of all the creditors of every description have been gone into (*f*).

*Incoming Partners.*—An incoming partner who has not

(*b*) *Heath v. Percival*, 1 P. Wms. 682.

(*c*) *Evans v. Drummond*, 4 Esp. 89.

(*d*) *Hart v. Alexander*, 2 M. & W. 484; *Bilborough v. Holmes*, 5 Ch. D. 255.

(*e*) *Toulmin v. Copland*, 3 Y. & C. 625, thus applying the principle of *Clayton's case*, 1 Mer. 608—610, 611, to cash accounts between partners themselves; *S.C.*, 7 C. & F. 375.

(*f*) *Paynter v. Houston*, 3 Mer. 302.

agreed with the person suing him to be liable, is not liable for debts contracted by the old firm before his entering into it. Such an agreement may, however, be implied from circumstances.

Ashby and Rowland carried on business as partners, having an account with a bank in their own names. They then took one Shaw into partnership, without, however, giving notice to the bank, or altering the title of their account, and without making any rest in the account. The transactions at the banking house were with Rowland personally. The bankers never had notice that Shaw had been or was a partner until the dissolution of the partnership, when notice, signed by Ashby and Shaw, was sent them, that Rowland having withdrawn from the firm, no transaction to which he was a party could be recognized by them. Before Shaw became partner, Rowland had indorsed a bill of exchange in the partnership name of Ashby and Rowland to the bankers, who discounted it and placed the proceeds to the credit of the account. After Shaw became partner, and before the dissolution, Rowland indorsed two other bills in a similar manner, which were discounted as before. The balance of the account, at the time of the dissolution, was 60*l.* 5*s.* 3*d.*, against the partnership. The proceeds of all the three bills were intended to be devoted by Rowland to other than partnership purposes, but of this the bankers had no knowledge, and nothing appeared that could have raised their suspicions of it. The question was, how far Shaw was liable to the bankers on these bills, and it was decided that he was not liable on the bill, which was indorsed and discounted before he came into the firm, but he was liable on the two other bills; for it was said that each partner might have limited the authority of his co-partners to bind him, by giving notice to the bankers; he was also held liable upon so much of the cash balance, as became due, after the day on which he became a partner (*g*).

(*g*) *Tire v. Ashby*, 10 B. & C. 288. See also *Ex parte Peel*, 6 Ves. 602.

A firm agreed that one of the partners should retire, the assets being transferred to the continuing partners, who should take upon themselves the liabilities, and that the bankers of the firm (whose account was overdrawn), should release the retiring partner. The bankers signed a memorandum acceding to this arrangement. They could not afterwards make the retiring partner a bankrupt, on the ground of this debt; for the partner having, by the agreement to which the bankers were parties, been induced to give up his share in the partnership property, and to denude himself of the means of payment of the debt, it was contrary to equity that they should be allowed to proceed as if they had never caused him so to act; and they were restrained by injunction from so proceeding (*h*).

*Partnership Account with Banker.*—As has been said a partner has no implied authority to open an account in his own name on behalf of the partnership (*i*); but he may, if an acting partner, consent to the partnership account being transferred from one bank to another (*k*).

Where a partnership keeps an account with a banker, and a new partner comes into the firm, he cannot transfer a part of the assets of the old firm to his separate account, without the authority of the firm, so as to discharge the banker (*l*).

The fact of one of two partners having opened an account with a bank, in his own name, is not conclusive to show the account to be opened in his own behalf merely. The banker may prove that the customer was acting as agent of the partnership and that the account was a partnership account. On the other hand, the mere circumstance of the money deposited being partnership money,

(*h*) *Attwood v. Banks*, 2 Beav. 192.

(*i*) *Alliance Bank v. Kearsley*, L. R., 6 C. P. 433, ante, p. 252.

(*k*) *Beale v. Cuddock*, 26 L. J., Exch. 356.

(*l*) *Ex parte Hanson*, 18 Ves. 231.

is not sufficient to prove the account to be a partnership account (*m*).

The fact of one of many co-adventurers in a mining concern, who has assumed the management of the adventure, opening an account with a bank in the name of the adventurers does not show that he is expressly authorized by them to do so; and, as there is in general no implied authority in the case of mining adventures by which any one of the party may pledge the credit of the rest for money borrowed, even though for the purposes of the mine, if the account is overdrawn, the bankers have no remedy for the balance by action against the co-adventurers (*n*).

(*m*) *Cooke v. Seeley*, 2 Exch. 746.

(*n*) *Rickett v. Bennett*, 4 C. B. 686.

## CHAPTER XXIX.

## SAVINGS' BANKS.

A SAVINGS' BANK is defined to be an institution, in the nature of a bank, formed or established for the purpose of receiving deposits of money for the benefit of the persons depositing to accumulate the produce of so much thereof as shall not be required by the depositors their executors or administrators at compound interest, and to return the whole or any part of such deposit, and the produce thereof, to the depositors their executors or administrators—deducting out of such produce so much as shall be required for the necessary expenses attending the management of such institution—but deriving no benefit whatever from any such deposit or the produce thereof (*a*). A savings' bank company is not necessarily a banking company (*b*).

In 1863, the previous acts relating to savings' banks in England and Ireland were repealed, and new provisions were made for their management and establishment, which are consolidated into one act (*c*).

Since the 28th of July, 1863, savings' banks cannot be formed under the provisions of the new statute, unless they have received the previous sanction and approval of the Commissioners for the Reduction of the National Debt, or the Comptroller-General or Assistant-Comptroller acting

(*a*) 9 Geo. 4, c. 92, s. 2; 26 & 27 Vict. c. 87, s. 2.

(*b*) *Coe, Ex parte*, 10 W. R. 138; 31 L. J., Bank. 8.

(*c*) 26 & 27 Vict. c. 87. This act repeals the 9 Geo. 4, c. 92; 3 Will. 4, c. 14, ss. 21, 22, 25, 28, 29—35; 5 & 6 Will. 4, c. 57; 7 & 8 Vict. c. 83; 11 & 12 Vict. c. 133; 17 & 18 Vict. c. 50, s. 2; 22 & 23 Vict. c. 53; and 23 & 24 Vict. c. 137. See also 40 Vict. cc. 13, 14; 37 & 38 Vict. c. 73. The 59 Geo. 3, c. 62, as to Scotland, remains in force until the Scotch Savings' Banks adopt the Act of 1863. By 26 Vict. c. 25, and 32 & 33 Vict. c. 59, the National Debt Commissioners may invest the savings of banks under 9 Geo. 4, c. 92.

under the Commissioners (*d*). The rules and regulations for the management of savings' banks must be entered in books kept for the purpose, and open for the inspection of depositors, or the managers and trustees will not be entitled to avail themselves of the privileges or powers conferred by the enactment (*e*).

Banks established under the provisions either of the repealed statutes, or of the Act of 1863, are to be certified by the title of "Savings' Bank certified under the Act of 1863," and the members of any other bank, association or company, or any other person, using or adopting such title as their designation for carrying on business, will be guilty of a misdemeanor, and on conviction will be punishable accordingly (*f*).

*Deposits.*—No person can become a depositor for the first time, without disclosing his name, profession, business, occupation, calling and residence (*g*).

Every person at the time of his first deposit must, and afterwards as often as required by the trustees or managers, make and sign a declaration of not being entitled to any deposit in or benefit from any other savings' bank: and this under pain of forfeiting the deposit or benefit, if in the opinion of the barrister (*h*) the deposit was made with a fraudulent intention: such declaration is to be filed and kept by the trustees; a printed notice of this regulation being affixed in the bank; and a copy of the declaration, with notice of the penalty, annexed to or printed at the beginning of the deposit book (*i*).

No one can deposit more than 30*l*. in any one year, exclusive of compound interest (*j*).

(*d*) 26 & 27 Vict. c. 87, s. 2.

(*e*) *Id.* s. 3.

(*f*) *Id.* s. 5.

(*g*) *Id.* s. 36.

(*h*) See now 39 & 40 Vict. c. 52, for powers and duties of the certifying barrister.

(*i*) 26 & 27 Vict. c. 87, s. 38.

(*j*) *Id.* s. 39. Depositors may transfer their deposits to any other savings' banks, s. 40.

Moreover, deposits cannot be received from any depositor, so as to make the sum to which he shall be entitled exceed 150*l.* in the whole, exclusive of interest (*k*).

Although a depositor's money may go on increasing, at compound interest, until it reaches 200*l.* in the whole, yet, thenceforth, no interest will be payable on such deposit, so long as it remains at that amount (*k*).

Attempts at evasion of the statute, in this respect, by taking advantage of the clauses enabling persons to deposit money in trust for others have been treated as follows:—

A person after depositing in his own name in a savings' bank to the full extent allowed, made further deposits to another account in the name of himself and his sister, but nominally as a trustee for her, in this form:—"Henry Field, in trust for Ann Field," making a declaration accordingly. It appeared, on examination, that the statute, whilst allowing one person to deposit money in trust for another person, in their joint names, still left him at liberty to withdraw it without any communication with that person.

A Court of Equity, considering that the second account had been opened only with a view of evading the statute, and not with the intention of creating a trust in favour of the sister, refused to declare her to be entitled to the sum deposited to the second account (*l*).

By the Married Women's Property Act, 1870, it is enacted, "that notwithstanding any provision to the contrary in the act of the tenth year of George the Fourth, chapter twenty-four, enabling the Commissioners for the Reduction of the National Debt to grant life annuities and annuities for terms of years, or in the acts relating to savings' banks and post office savings' banks, any deposit hereafter made and any annuity granted by the said Com-

(*k*) 26 & 27 Vict. c. 87, s. 39. Depositors dying having 50*l.*, or over that sum, how payable to representatives, ss. 41, 42, 43. See *Marsden, In re*, 1 S. & T. 542.

(*l*) *Field v. Lonsdale*, 13 Beav. 78.

missioners under any of the said acts in the name of a married woman, or in the name of a woman who may marry after such deposit or grant, shall be deemed to be the separate property of such woman, and the same shall be accounted for and paid to her as if she were an unmarried woman; provided that if any such deposit is made by, or such annuity granted to, a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this act, order such deposit or annuity or any part thereof to be paid to the husband" (m).

Deposits may be received from the trustees or treasurers of any friendly society legally enrolled or certified in the manner required by the acts in force relating to friendly societies, without restriction as to amount (n), and from the trustees or treasurers of any charitable or provident institution or society, or charitable donation or bequest, for the maintenance, education or benefit of the poor, or of any penny savings' bank within the United Kingdom, to the amount of 100*l. per annum*, and of 300*l.* in the whole, exclusive of interest (o); but funds of benefit building societies are not allowed to be invested in savings' banks (p).

*Annuities.*—Depositors in savings' banks are enabled to purchase annuities of not less than one nor more than thirty pounds each (q).

*Deposit Book.*—By the rules of a savings' bank, entries of deposits were to be made in a book kept by the bank for the purpose, and also in a duplicate account book to be kept by the depositor, which duplicate was to be a voucher for the party producing it, and a receipt for the bank, when it was handed over to them. A. deposited in the

(m) 33 & 34 Vict. c. 93, s. 2.

(n) 26 & 27 Vict. c. 87, s. 33.

(o) *Id.* s. 32.

(p) 6 & 7 Will. 4, c. 32, s. 6.

(q) 16 & 17 Vict. c. 45.

name of B. a sum with the bank, and afterwards, without his authority, got back the money, and delivered up to the bank the duplicate account book:—It was held that B. nevertheless still continued a depositor, and the bank was liable for having allowed B.'s money to be drawn out without his licence (r).

Provision must be made in the rules of all savings' banks for every depositor, once a year at least, causing his deposit book to be produced at the bank for the purpose of being examined (s).

*Remedies of Depositors.*—By the same act it was enacted, that any dispute arising between the trustees and managers and an individual depositor, or his executor, administrator, next of kin or creditor or assignee, or a person claiming to be entitled to any deposit, was to be referred in writing to the barrister appointed under the Savings' Banks Acts, who had power to proceed *ex parte* on a notice in writing to the trustees or managers being left or sent through the Post Office to the office of the bank; and whatever award, order or determination he might have made, would have been binding and conclusive on all parties, and final to all intents and purposes, without any appeal (t). The submission and award are exempt from stamp duty (u). Now, however, the dispute must be referred to the registrar under the Friendly Societies Act, 1875, s. 22 (v).

An action is not maintainable by depositors against the trustees or managers to recover their deposits; they must have recourse to the mode of reference pointed out by the statute (x).

(r) *Rex v. Cheadle Savings' Bank*, 1 A. & E. 323.

(s) 26 & 27 Vict. c. 87, s. 6.

(t) *Id.* s. 48. He may inspect books and administer oaths, *Id.* s. 49; see *Lynch v. Fitzgerald*, 15 Law Times, 372.

(u) *Id.* s. 50.

(v) 38 & 39 Vict. c. 60, s. 22, and see 39 & 40 Vict. c. 52, s. 2, subs. 1.

(x) See, under the former acts, *Crisp v. Bunbury*, 8 Bing. 394; *R. v. Witham Savings' Bank*, 1 A. & E. 320; *R. v. Mildenhall Savings' Bank*, 6 A. & E. 952; *R. v. Norwich Savings' Bank*, 9 A. & E. 729, and see statutes cited in previous note.

*Investments.*—The trustees must pay into the Bank of England or the Bank of Ireland, as the case may require, all sums to be invested in the names of the Commissioners for the Reduction of the National Debt, that is to say, all the deposits they receive, except such sums as from time to time may necessarily remain in the hands of the treasurers to answer the exigencies of the savings' bank; and they are not to invest in any other manner or upon any other security (*y*); and all moneys so paid into the Bank of England or Ireland must be invested by the commissioners from time to time in the purchase of Bank Annuities or Exchequer Bills or parliamentary securities of whatsoever kind, created or issued under the authority of any Act or Acts of Parliament for the interest on which provision is made by Parliament, or any stock or debenture or other securities expressly guaranteed by authority of Parliament, and the interest, as it becomes due thereon, is in like manner to be invested in these Government Annuities, Exchequer Bills or securities (*z*).

*Weekly and Annual Accounts.*—The trustees and managers are to transmit weekly returns to the Commissioners for the Reduction of the National Debt, showing the amounts of the week's transactions and the amount of the cash balances in the hands of the treasurer or other person on account of the bank (*a*). The trustees and managers are annually to prepare a general statement of the funds of the savings' bank invested in the Bank of England or the Bank of Ireland, showing the balance or principal sum due to all the depositors collectively, the expenses incurred, and stating in whose hands the balance shall be (*b*). If the trustees neglect to make out and transmit this statement to the commissioners, the commissioners may close

(*y*) 26 & 27 Vict. c. 87, s. 15. By 43 & 44 Vict. c. 36, investments are now allowed in Government Stock.

(*z*) 26 & 27 Vict. c. 87, s. 19.

(*a*) *Id.* s. 7.

(*b*) *Id.* s. 55. As to computation and rate of interest, *Id.* ss. 21, 22, 23,

the account of the trustees (*b*). Every depositor is entitled to a printed copy of the annual statement on payment of a penny (*c*).

*Officers.*—Every treasurer, actuary or cashier, being intrusted with the receipt or custody of money subscribed or deposited for the purpose of the bank, or any interest or dividend from time to time accruing therefrom, and every officer receiving any salary or allowance for his services from the funds of the savings' bank, must give security by bond, with one or more sureties, to the Comptroller-General of the National Debt Office for the time without fee or reward (*d*), and the bond when executed is to be deposited with the Commissioners for the Reduction of the National Debt (*d*).

With the view of securing savings' bank depositors against loss by the acts or misconduct of the officers employed, the legislature has given a prior or precedent claim over their estate or goods in the event of their bankruptcy or death.

The provision is, that if any person appointed to any office in a savings' bank, and being intrusted with the keeping of the accounts, or having in his hands or possession, by virtue of his office or employment, any moneys or effects belonging to the bank, or any deeds or securities relating to the same, dies or becomes bankrupt or insolvent, or has any execution or attachment or other process issued against his lands, goods, chattels or effects, or makes any assignment for the benefit of his creditors,—then his executors, administrators or assignees, or other persons having legal right, according to the case, or the sheriff or other officer executing such process, must, within forty days after demand, made by two of the trustees, deliver

(*b*) 26 & 27 Vict. c. 87, s. 55. As to computation and rate of interest, *Ibid.* ss. 21, 22, 23.

(*c*) *Ib.* s. 59.

(*d*) *Ib.* s. 8.

and pay over all moneys and other things belonging to the bank to such person as the trustees may appoint, and pay out of his estate, assets or effects, all money remaining due which such officer received by virtue of his office or employment, before any other of his debts are paid or satisfied, or before the money directed to be levied by the process is paid over to the party issuing it, and all his assets, lands, goods, chattels, estates and effects shall be bound to the payment and discharge thereof accordingly (*e*).

A draper was appointed actuary and cashier of a savings' bank, a rule of which was, that one or more members of the committee should attend at the cashier's shop to receive the deposits; this rule, however, was not attended to, and the cashier was permitted to receive the deposits. He became bankrupt, and the deposits were held not to be "moneys in his hands by virtue of his office," so as to be claimable in full by the bank.

The duty of the office of actuary did not include the receipt of money, which duty, by the rule, was imposed on one or more members of the committee; nor did the duty of cashier include the receipt of money for the same reason, for the duty of a cashier is to pay money; consequently the moneys were not in his hands, at the time of his bankruptcy, *by virtue of his office* (*f*).

In the case of the bankruptcy of any person in office in a savings' bank, the savings' bank can only be paid in full his debt to them, when they have conformed in all respects to the statute, and there has been no negligence or laches on the part of the manager or trustees of the institution.

Where a person on his appointment as treasurer of a savings' bank entered into the usual bond, but did not actually receive any money, the deposits being paid by the

(*e*) 26 & 27 Vict. c. 87, s. 14.

(*f*) *Ex parte Fleet*, 4 De G. & S. 52; *The Dartford Savings' Bank*, see 1 Fonb. Bank. R. 137.

managers directly into a bank, of which he was a partner, to the credit of the trustees of the savings' bank, who were allowed interest on it, but he signed the monthly return to the National Debt Office, thereby acknowledging the balance to be in his hands as treasurer, on the bankruptcy of the bank, the savings' bank recovered in full (*g*).

An officer, being robbed of the moneys of the bank before the time for paying them over has arrived, would not be personally liable for the amount (*h*).

If an actuary, cashier, secretary or officer receives any sum or sums of money from or on account of a depositor or on account of the bank, and does not forthwith, or in the case of local receivers within the time specified in the rules, duly account for and pay over the same to the trustees or managers or to such persons as may be directed by the rules, he will on conviction be guilty of a misdemeanor (*i*).

All officers upon demand are bound to account for and deliver up all moneys, effects, funds or securities, books, papers or property, belonging to the bank in their hands, by order of not less than two trustees and three managers, or at any general meeting of the trustees or managers: on default, the trustees may exhibit a petition to the Quarter Sessions, who may proceed in a summary way, and make such order upon hearing all parties concerned, as they may think just, and such order will be final (*j*).

*Trustees.*—All moneys, goods, chattels and effects whatever, and all rights or claims, belonging to a savings' bank are vested in the trustees for the time being, without a fresh assignment or conveyance being necessary on the death or removal of any one or more of them (*k*); and in all criminal or civil proceedings shall be stated to be the

(*g*) *Ex parte Riddell*, 3 M., D. & De G. 80.

(*h*) *Walker v. Guarantee Association*, 18 Q. B. 277.

(*i*) 26 & 27 Vict. c. 87, s. 9.

(*j*) *Id.* s. 13.

(*k*) *Id.* s. 10.

property of the person or persons appointed trustee or trustees for the time being in his or their proper name without further description (*l*).

No trustee or manager is personally liable, except for his own acts and deeds: he is not personally liable for anything done by him in virtue of his office, except in cases where he is guilty of wilful neglect or default (*m*).

A trustee or a manager of a savings' bank in Ireland, having declared in writing under his hand deposited with the Commissioners for the Reduction of the National Debt, that he is willing to be answerable for a specific amount only, such amount being in no case less than 100*l*., will not be liable to make good any deficiency arising in the funds beyond the amount specified (*n*). This provision is not applicable to managers or trustees of savings' banks in England.

Nevertheless, every trustee and manager is personally responsible and liable for all moneys actually received by him on account of or for the use of the bank, and not paid over or disposed of according to the rules (*m*).

But a trustee or a manager who is robbed of moneys before the time for paying them over, according to the rules, has elapsed, would not be personally liable to replace or restore the amount (*o*).

A trustee of a savings' bank may be indicted under the 24 & 25 Vict. c. 96, s. 80, as a fraudulent trustee for the misappropriation of moneys deposited with him (*p*).

For other points of minor importance the reader is referred to the statutes respecting savings' banks (*q*).

*Military, Naval and Post Office Banks.*—The legislature has provided by special measures for the establishment

(*l*) 26 & 27 Vict. c. 87, s. 10.

(*m*) *Id.* s. 11.

(*n*) *Id.* s. 12.

(*o*) *Walker v. Guarantee Association*, 18 Q. B. 277.

(*p*) *Reg. v. Fletcher*, 31 L. J., M. C. 206.

(*q*) Exemptions from stamp and other duties in favour of savings' banks, 26 & 27 Vict. c. 87, s. 50; 3 & 4 Will. 4, c. 14, s. 19; from income tax, 5 & 6 Vict. c. 35, s. 88.

of military savings' banks, which are exempted from the operation of the enactments respecting savings' banks in general (*r*): of savings' banks for seamen (*s*), of savings' banks for the Royal Navy and Marines (*t*), and of Post Office savings' banks having the direct security of the State for repayment of the deposits (*u*).

(*r*) 22 & 23 Vict. c. 20.

(*s*) 17 & 18 Vict. c. 104, s. 180; 19 & 20 Vict. c. 41; 25 & 26 Vict. c. 63.

(*t*) 29 & 30 Vict. c. 43; 32 & 33 Vict. c. 59.

(*u*) 24 Vict. c. 14; 26 Vict. c. 14; 29 & 30 Vict. c. 5; 32 & 33 Vict. c. 59.

## CHAPTER XXX.

## THE RELATIONS OF PUBLIC BODIES, COMPANIES, AND OF PERSONS FILLING REPRESENTATIVE CHARACTERS TO BANKERS.

*Trustees and Commissioners of Public Bodies.*—Trustees and commissioners of public bodies, provided they act in accordance with their statutory powers, are, as a rule, exempt from personal liability (*a*). They may, however, make themselves personally liable by pledging their own individual credit, and not that of the funds at their disposal; or, if they have acted beyond their authority, as, for instance, by borrowing money not in conformity with their borrowing powers, on an implied warranty that they possessed the authority they held themselves out as possessing (*b*).

*Companies.*—In dealing with joint stock companies it is material for bankers, before they make advances, to ascertain whether the *directors*, who represent the company, have power to borrow money; if they have not, such advances will not, in law, be recoverable from the company as a debt (*c*). In equity, however, a company may be compelled to refund money improperly borrowed by its directors, if such monies have been applied to paying debts previously contracted by the company (*d*). Whether the directors of a company can bind the company by borrowing money depends upon the nature of its business, and upon its charter, act of parliament, deed of settlement or

(*a*) See 10 & 11 Vict. c. 16, s. 60.

(*b*) See *Parrot v. Eyre*, 3 M. & Sc. 857; 10 Bing. 283; *Eaton v. Bell*, 5 B. & Ald. 41; *Higgins v. Livingstone*, 4 Dowl. 355.

(*c*) *Ex parte Chippendale*, 4 De G., Mac. & G. 19; *Burmester v. Norris*, 6 Exch. 796; *National Permanent Benefit Building Society*, *supra*.

(*d*) *National Permanent Benefit Society*, L. R., 5 Ch. 309; *Cork and Youghall Railway Company*, L. R., 4 Ch. 748.

regulation (*e*). It is important to remember that the directors of a company forbidden, or not possessing the power, to borrow may nevertheless bind the company by overdrawing its banking account; and, provided such overdraft is made in the ordinary course of business, the bankers may recover from the company (*f*). An *overdraft* is distinguishable from a *loan*. Where directors borrow in excess of the limited power of borrowing conferred upon *them* by the articles of association, the act is *ultra vires* the articles only, and may nevertheless be ratified by the company, and so become binding upon it. *Aliter*, if the *company's* power to borrow is exceeded (*g*).

Liability of  
directors.

*Liability of Directors.*—Directors who borrow money *ultra vires* may be rendered liable in damages for breach of an implied warranty that they possessed the authority to borrow they represented themselves as possessing (*h*); but where these powers are readily ascertainable, and the other contracting party chooses to deal with them without inquiry, it would seem, in the absence of fraud, that the directors could not be held responsible, nor are they liable for a *bonâ fide* mistake as to the legal extent of the authority (*i*).

Three directors of a railway company opened, on behalf of the company, an account with a bank, and sent a letter signed by the three as directors, requesting the bank to honour cheques signed by two of the directors and countersigned by the secretary. The account having been largely overdrawn by means of such cheques, the bank sued the company, recovered judgment, and issued an *elegit*. The proceeds being insufficient to satisfy the debt, the bank

(*e*) Lindley on Partnership, p. 269. As to trading companies, see *Hamilton Windsor Iron Works, In re, Pitman & Edwards, Ex parte*, 12 Ch. D. 707.

(*f*) *Waterlow v. Sharp*, L. R., 8 Eq. 501; *In re Cefn Cilcen Mining Company*, L. R., 7 Eq. 90; *Beattie v. Lord Ebury*, L. R., 7 Ch. 777; L. R., 7 H. L. 102; 41 L. J., Chanc. 804.

(*g*) *Irvine v. Union Bank of Australia*, L. R., 2 App. Ca. 366, 380. See also on this subject, *Royal British Bank v. Turquand*, 5 E. & B. 248; 6 E. & B. 327.

(*h*) *Richardson v. Williamson*, L. R., 6 Q. B. 296.

(*i*) See Lindley, p. 367.

filed a bill in equity to make the directors personally liable. It was determined that the letter did not make the directors personally responsible for the debt, for that, assuming the letter to contain a representation that the directors had power to overdraw the account, and such representation to be erroneous, this was not a misrepresentation of fact which the persons making it were bound to make good, but only a mistaken representation of the law; and, moreover, that even if it had been such a false representation as the directors were bound to make good, the bank would have had no claim against them, since it had been able to enforce the same remedies against the company as if the representation had been true (*i*).

Two of the directors of a joint stock company, by a letter to the company's bankers, notified that their manager had authority to draw cheques on account of the company. Such two directors did not form a majority of the directors of the company, as required by their act of incorporation, so as to bind the company. Although the company's account was at the time overdrawn, and that fact was known to the two directors, the bankers honoured the manager's cheques on the authority so given to them. In an action by the bank against the two directors for advances made on account of the company upon the faith of their letter:—Held, that there was an implied warranty on their part, and that they were personally liable to the bank to the extent of the sums overdrawn by the manager subsequently to the date of their letter (*j*).

*Trustees, Executors and others.*—For the guidance of trustees, executors and other persons filling representative characters, in dealing with bankers, and *vice versâ*, it will be useful to state some principles, with brief illustrations.

(*i*) *Beattie v. Lord Ebury*, L. R., 7 Ch. 777; L. R., 7 H. L. 102; 41 L. J., Chanc. 804.

(*j*) *Cherry v. Colonial Bank of Australasia*, L. R., 3 P. C. 24; 6 Moore, P. C. C., N. S. 235. See also *Weeks v. Propert*, L. R., 8 C. P. 427; *Richardson v. Williamson*, L. R., 6 Q. B. 276.

A trustee or executor who has deposited trust money in a bank *pending* investment, and not for an undue and unnecessary period, will not be liable on failure of the bank. But if a trustee or executor has unnecessarily left trust monies in the hands of a banker which he ought to have invested, and has paid funds into a bank for the purpose of investment, and neglected for some time to make inquiries as to such investment, he will be liable in the event of the bank's failing, and this notwithstanding the usual clause of indemnity against the acts and defaults of others (*k*). The following cases will illustrate these rules.

The executors and trustees under a will, having contracted to purchase land, sold out stock just before the time at which the purchase was to be completed, and deposited the proceeds, intending merely a temporary deposit, in the banking house with which the testator for many years had kept an account, and the principal clerk in which had been his confidential adviser in pecuniary affairs. The bank failed with the deposit in its possession:—Held, that the executors were not responsible (*l*).

A., at his death, had about 2,000*l*. in the hands of his bankers, and his executors paid some monies which they had received on account of the estate, to their account at the same bankers, and drew out such sums as they required from time to time. About nine months after his death the bankers became bankrupt, having, at that time, a balance of about 2,000*l*. belonging to the estate in their hands, and of which the sum of 1,000*l*. was ultimately lost by their bankruptcy. The Master, on a reference, found that there were not any purposes of their trust which rendered it necessary for the executors to retain the balance with the bankers, but the Court was of opinion that the executors were not answerable for the loss (*m*).

(*k*) *Fenwick v. Clarke*, 31 L. J., *Chanc.* 728; *Challen v. Shippam*, 4 Hare, 555; *Rehden v. Wesley*, 29 Beav. 213; *Matthews v. Brise*, 6 Beav. 239.

(*l*) *France v. Woods*, Taml. R. 172.

(*m*) *Johnson v. Newton*, 11 Hare, 160.

Executors of a testator, who died in 1862, had, in March, 1865, a balance of nearly 3,000*l.* at their bankers, who had been his bankers for twenty years. The estate realized more than 30,000*l.*, and considerable sums were from time to time required to be paid into and out of the account, and the balance was larger than it would otherwise have been in expectation of a mortgage having to be paid off. A loss having resulted from the failure of the bank, the executors were held not justified in keeping a balance of more than 1,000*l.*, and the loss upon the excess above that sum had to be borne by them (*n*).

An administrator who had deposited trust monies in a private bank on a separate account current, using ordinary prudence, was held not to be liable for the loss of the monies through the failure of the bank, although the monies had been suffered to remain so deposited for three and a-half years after the death of the intestate, and for nearly a year and a-half after the administrator had carried into chambers, in the suit, his accounts showing a large balance against himself (*o*).

A sole executor and trustee of personal estate of a testator, in trust for his widow for her life, and after her death, to pay or otherwise divide it in equal shares amongst his children, paid 300*l.*, part of the assets, into an old-established bank at Chichester, who had for many years been his own bankers, with a direction in writing to invest the money in Consols in his name for the purposes of the trust. Instead of doing so, the bankers, without his knowledge, opened a new account with him, in which they gave him credit for 300*l.*, the executor and another person, his partner, having a joint account with the bank in which no notice of the 300*l.* appeared. The executor, relying that the investment had been duly made, never called for the transfer note, or made any other inquiry, and remained in ignorance that the investment had not

(*n*) *Astbury v. Beasley*, 17 W. R. 638.

(*o*) *Finch v. Marcon*, 40 L. J., Chanc. 537.

been made until the bankers became bankrupt, a period of nearly five months. The executor proved for the 300% under the *fiat*, and insisted that he was not bound to account for more than the dividend received, alleging that the employment of bankers was the necessary and only course available to a person resident in the country, to invest money in the government funds; but he was decreed to pay the whole 300% with interest at 4 per cent. (*p*).

By a decree made in an administration suit, a contract for the sale of property belonging to an estate was to be carried out by a trustee, but there were no directions given as to the payment or receipt of the purchase-money. The trustee, with the acquiescence of the solicitor of the testator, and others interested under his will, deposited the purchase-money in a private bank, at interest. The bank afterwards failed: it was held, that the trustee was not liable for the money so lost; and he would not have been liable even if the money had been deposited so as not to be repayable on demand (*q*).

So if a trustee, or other person standing in a fiduciary position, mixes trust money with his own so that it cannot be separated with perfect accuracy from the latter, the *cestui que trust* has a right to resort to the whole of the trustee's property for what is due to him (*r*).

On the same principle an attorney paying in his client's money to his bankers to his own account, mixing it with his own, is liable on the failure of the bank to pay the whole to the client (*s*).

So when a trustee pays trust money into his banker's account, thereby mixing his money with his own, subsequent sums drawn out by him will be attributed to the earliest items on the credit side of his account for the time being, and the trust money will in this way in its turn be con-

(*p*) *Challen v. Shippam*, 4 Harc. 555.

(*q*) *Wilkes v. Groome*, 3 Drew. 584.

(*r*) See *Cook v. Addison*, L. R., 7 Eq. 471.

(*s*) *Robinson v. Ward*, R. & M. 274; 2 C. & P. 59.

sidered as drawn out, whether or not the result be that a balance remains of his own monies (*t*).

H. having a balance of 3,961*l.* 10*s.* 3*d.* at his bank paid in 5,000*l.* trust money. Between the time of doing so and his death he paid in various sums together amounting to 12,847*l.* 4*s.* 4*d.* No part of the sum was devoted to the purposes of the trust, and he was still liable for the 5,000*l.* at the date of his death:—Held, that the balance remaining at his bank formed part of his general estate, and could not be appropriated by the beneficial owner of the 5,000*l.* (*t*).

But when a customer has opened with his bankers separate accounts specially headed with the name of the trusts to which the monies paid into those accounts belong, the bankers are not at liberty, upon the bankruptcy of the customer, to apply those monies in payment of the balance due to them upon the customer's overdrawn private account (*w*).

So if an account is opened as an executorship account, the bank is affected with notice of all such equities as may be attaching thereto (*x*).

*Payment by Bankers.*—One of several trustees cannot, unless expressly authorized to do so, give a good receipt by himself, and his co-trustees must join (*y*).

Payment by  
bankers to  
trustees or  
executors.

So payment by bankers to one of several trustees, of the proceeds of stock, sold out under a joint power of attorney from the trustees, does not discharge the bankers as against the other trustees, unless the trustee is authorized by the others (*z*).

Formerly at law the signature of a trustee was conclusive evidence that he had received the money; but in equity he was and of course still is permitted to show that

(*t*) *Brown v. Adams*, L. R., 4 Ch. 764; 39 L. J., Chanc. 67. See also *Pennell v. Deffell*, 4 D., M. & G. 372.

(*w*) *Ex parte Kingston*, L. R., 6 Ch. 632; 40 L. J., Bank. 91.

(*x*) *Bailey v. Finch*, L. R., 7 Q. B. 34; 41 L. J., Q. B. 83; 20 W. R. 294.

(*y*) *Walker v. Symonds*, 3 Sw. 63; *Lee v. Sankey*, L. R., 15 Eq. 204.

(*z*) *Stone v. Marsh*, R. & M. 364.

he merely joined in the receipt for the sake of conformity, and that he never in fact received the money (*b*). A trustee, therefore, may safely permit his co-trustee to *receive* or *collect* trust monies (*c*). In the case of executors, inasmuch as one executor can alone give a good discharge, it was formerly thought this privilege did not attach, but the rule seems now to be as follows: "If the receipt be given for the purpose of mere form, the signing will not charge the person not receiving; but if it be given under circumstances purporting that the money, though not actually received by both executors was *under the control of both*, such a receipt shall charge; and the true question in these cases seems to be whether the money was under the control of both executors" (*d*). A trustee is, moreover, liable if he permit his co-trustee to *retain* trust funds for a longer period than necessary (*e*).

Where a married woman and A. were appointed executrix and executor of a will, but the husband dissented from his wife's administering, and probate was refused to her, and the bank owed a balance to the testator and had securities of his in their hands, and paid the balance and delivered the securities to the wife without knowledge of the husband's dissent, or the refusal of probate, the bank was held to have a good defence to an action by A. to recover the same (*f*).

So payments by an executor *de son tort* to a bank in satisfaction of debts owing to the bank by the deceased, in respect of an overdrawn account, the executor *de son tort* really acting at the time as executor, so that the bank might reasonably suppose him to be rightful representative, are good, and the bank may retain them against the representative of the deceased (*g*).

(*b*) *Brice v. Stokes*, 2 W. & T. L. Ca. 865; *Fellows v. Mitchell*, 1 P. & W. 81; and see now Jud. Act, 1873, s. 25, subs. 11.

(*c*) *Townley v. Sherbourne*, 2 W. & T. L. Ca. 858.

(*d*) *Per* Lord Redesdale, in *Joy v. Campbell*, 1 Sch. & L. 341.

(*e*) *Brice v. Stokes*, *supra*.

(*f*) *Pemberton v. Chapman*, 26 L. J., Q. B. 117; 7 El. & Bl. 210.

(*g*) *Thompson v. Harding*, 2 El. & Bl. 630.

If a banker, employed to receive and to pay over the assets of a testator, pays them over, so that they may be applied for the purposes of the will, he is not responsible for the executor's misapplication, but if, in dealing with the executor, he pays the assets for the private purposes of the executor, he is *particeps criminis* in a breach of trust, and he is equally a party to the breach of trust, whether he applies the money to the debt or to the trade of the executor (*h*).

If the bankers or trustees wrongfully sell out stock of the trustees, and apply it to their own purposes, the measure of their liability is the sum paid in replacing the stock (*i*).

If one of the banking firm sells the stock unknown to the partners, but under circumstances such that they might, by the exercise of proper diligence and attention have discovered it, equity will impute knowledge, and hold them all liable (*j*), even though the selling of stock did not come within the scope of the firm's business. Where it does so, knowledge is not necessary as previously stated (*k*).

If one executor places the testator's money in the hands of the other, who happens to be a banker, so that the act is not an improvident act, the executor depositing is not chargeable in case of a loss, inasmuch as if he had been sole executor, and had under the same circumstances deposited at a bankers, he would not have been liable (*l*).

If three executors have an account in their names with a banker, and one draws a cheque, it seems the bankers may refuse to cash it, if they have received notice from *one* of the others, not to part with the money (*m*).

As has been already suggested an executor placing money which he ought to have invested in his banker's

(*h*) See *per* Sir J. Leach, in *Keane v. Roberts*, 4 Mad. 332, 358. See *Davis v. Spurling*, 1 Russ. & M. 64.

(*i*) *Sadler v. Lee*, 6 Beav. 324.

(*j*) *Ex parte Heaton*, Buck, 386; *Sadler v. Lee*, 6 Beav. 324.

(*k*) *Ante*, p. 252.

(*l*) *Chambers v. Minchin*, 7 Ves. 198; 2 Wms. Exors. 1552.

(*m*) *Gaunt v. Taylor*, 2 Hare, 413.

hands, mixed with his own account, is liable for the amount on the failure of the banker (*n*).

The mere fact that an executor has opened an account with a banker as executor, does not entitle the banker to rank as a creditor upon the testator's estate in respect of an overdrawn balance of the account (*o*).

Receiver.

*Receiver*.—A receiver under an order in Chancery is not liable for sums deposited with a banker in good credit, provided there is nothing to attach fraud, and no laches, (as if he has left the money an unwarrantable time in the banker's hands,) on the failure of the banker. In such a case a receiver will be liable, if he leaves money in the hands of his bankers, and receives interest upon the sums so deposited, and the bankers fail (*p*).

(*n*) *Fletcher v. Walker*, 3 Mad. 73.

(*o*) *Farhall v. Farhall*, L. R., 7 Ch. 123; 41 L. J., Chanc. 146.

(*p*) *Drever v. Maudesley*, 8 Jur. 547.

## CHAPTER XXXI.

## LIBEL ON BANKERS.

BANKERS, in partnership, could always join in maintaining an action for a libel against them in respect of their business and touching their credit, without disclosing the ratios or shares in which each of them was interested in the concern (*a*); but until recently only joint damages could have been given in such an action, and any separate damage for injury caused to any individual partner was not recoverable by him. But now, by Ord. XVII. r. 6 of the Judicature Acts, claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. Consequently in a case like that under consideration, where one partner has suffered some especial injury, he may now recover damages in respect thereof as well as joint damages with the firm (*b*).

The firm itself, however, cannot recover damages for any private injury caused to one of its partners, nor, on the other hand, where one partner has been libelled *quà* his private capacity, can he recover damages caused to the firm.

To say of a banker that he has suspended payment is actionable: for it is saying that he cannot pay his debts; and a temporary inability to pay debts is insolvency; and such action is maintainable, without alleging or showing special damage (*c*); and it has been held, that where such an imputation has been made against one partner, the credit of the firm is also reflected upon, and that the partner, the firm, or both, may sue for damages (*d*).

(*a*) *Ward v. Smith*, 6 Bing. 749; 4 C. & P. 302; *Le Fanu v. Malcolmson*, 1 H. L. Cas. 637; *Forster v. Lawson*, 3 Bing. 452; 11 Moore, 360; *Robinson v. Marchant*, 7 Q. B. 918; *Haythorn v. Lawson*, 3 C. & P. 196.

(*b*) See *Booth v. Briscoe*, 2 Q. B. D. 496; 25 W. R. 838.

(*c*) *Forster v. Lawson*, *supra*.

(*d*) *Harrison v. Berington*, 8 C. & P. 708.

## CHAPTER XXXII.

## CRIMINAL LIABILITY OF BANKERS.

A CLEAR opinion was expressed by two judges in a case already referred to (*a*), that a banker who negotiated bills intrusted to his care, knowing himself to be on the eve of bankruptcy, would (notwithstanding that it was the usage of the county of Lancaster amongst bankers) run great hazard of incurring the penalties enacted in 52 Geo. III. c. 63, a statute passed to prevent the embezzlement of securities for money deposited for safe custody or for any special purpose with bankers. That statute is now repealed; but similar provisions were first substituted by the 7 & 8 Geo. IV. c. 29, ss. 49, 50, and by the 20 & 21 Vict. c. 54, which were subsequently consolidated in 1861 in one statute.

The consolidating enactment, 24 & 25 Vict. c. 96, s. 75, is as follows:—

Frauds by  
agents, etc.

*As to Frauds by Agents, Bankers, or Factors.*—Whosoever, having been intrusted, either solely or jointly with any other person, as a *banker*, merchant, broker, attorney or other agent, with any money or security for the payment of money, with any direction in writing, to apply, pay or deliver such money or security, or any part thereof respectively, or the proceeds or any part of the proceeds of such security for any purpose, or to any person specified in such direction, shall, in violation of good faith and contrary to the terms of such direction, in anywise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so

(*a*) *Thompson v. Giles*, 2 B. & C. 427, 434, ante, p. 141.

intrusted, such money, security, or proceeds, or any part thereof respectively; and whosoever, having been intrusted either solely or jointly with any other person, as a *banker*, merchant, broker, attorney or other agent, with any chattel or valuable security (*b*), or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of the united kingdom or any part thereof, or of any foreign state, or in any stock or fund of any body corporate, company or society, for safe custody, or for any special purpose, without any authority to sell, negotiate, transfer or pledge, shall, in violation of good faith, and contrary to the object or purpose for which such chattel, security or power of attorney shall have been intrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable to be kept in penal servitude for any term not exceeding seven years, and not less than five years (by 27 & 28 Vict. c. 47, s. 2), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

But nothing in this section contained, relating to agents, shall affect any trustee in or under any instrument whatsoever, or any mortgagee of any property, real or personal,

(*b*) By sect. 1, the term "valuable security" is defined to include any order, Exchequer acquittance, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the United Kingdom, or of Great Britain, or of Ireland, or of any foreign state; or in any fund of any body corporate, company or society, whether within the United Kingdom or in any foreign state or country; or to any deposit in any bank, and also any debenture, deed, bond, bill, note, warrant, order or other security whatsoever, for money or for payment of money, whether of the United Kingdom, or of Great Britain, or of Ireland, or of any foreign state; and any document of title to lands or goods.

in respect of any act done by such trustee or mortgagee, in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any *banker*, merchant, broker, attorney or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof, in such manner as he might have done if this act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien, claim or demand, entitling him by law so to do, unless such sale, transfer, or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim or demand.

By sect. 76, whosoever, being a *banker*, merchant, broker, attorney or agent, and being intrusted, either solely or jointly with any other person, with the property (c) of any other person for safe custody, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanor.

But by sect. 85, nothing in these sections shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any Court, or upon the hearing of any matter in bankruptcy or insolvency, and no person shall be liable to be convicted by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged

(c) By sect. 1, the term "property" includes every description of real and personal property, money, debts, legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and not only such property as shall have been originally in the person or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and any acquired by such conversion or exchange, whether immediately or otherwise.

with such offence have first disclosed such act on oath, in consequence of any compulsory process of any Court of Law or Equity, in any action, suit or proceeding, which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any Court upon the hearing of any matter in bankruptcy or insolvency.

And by sect. 86, nothing in these sections contained, nor any proceeding, conviction or judgment, to be had or taken thereon against any person under any of the said sections, shall prevent, lessen or impeach any remedy at law or in equity, which any party aggrieved by any offence against any of the said sections might have had if the act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; nor affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated.

In a case of great importance and notoriety, in which certain bankers, Strahan, Paul and Bates, had fraudulently disposed of a number of Danish bonds, which had been deposited with them for safe custody, and for the purpose of receiving the dividends upon them for the use of their customer, who had deposited them, it was attempted to take advantage of the proviso contained in the 52nd sect. of the 7 & 8 Geo. IV. c. 29 (now repealed by the 24 & 25 Vict. c. 95, and similar to sect. 85 of the 24 & 25 Vict. c. 96, above referred to), by the bankers becoming bankrupts, and, after they had been arrested and imprisoned on the criminal charge, making a voluntary declaration in the Court of Bankruptcy as to the misappropriation of the securities: but the attempt failed.

They were indicted at the Central Criminal Court (*d*),

(*d*) The trial took place October 26, 27, 1855, *coram* Alderson, B., Martin, B., and Willes, J. Sessions Paper, 1854—1855, p. 695; 7 Cox, C. C. 85.

for that, being bankers and agents to John Griffith, clerk, and being intrusted by him with certain bonds for safe custody without any authority to pledge or make away with them, in violation of good faith, did sell and convert the same to their own use and benefit.

Having pleaded not guilty, an application was made on their behalf for permission to plead double by adding a plea, alleging the fact of their having made the disclosure above mentioned, with a view of availing themselves of the 52nd section of 7 & 8 Geo. IV. c. 29; but the application being considered as resting on no authority, and made only to the discretion of the Court, was refused; and, as evidence was afterwards admitted for the purpose of bringing before the Court the steps which had been taken by the prisoners in this matter, it may perhaps be regarded as settled that, in future, any banker in like circumstances may avail himself of a defence similar to this to the criminal charge, under the plea of not guilty, if at all; and that it is not necessary to plead it specially.

It was proved that the bankers had sold certain Danish bonds, and transferred others belonging to Dr. Griffith, a customer, who had deposited them with the prisoners, as his bankers and agents, for safe custody, and in order that they might obtain for him the dividends as they fell due, and that he had never given them any authority to pawn or sell the same or any part of them, and that he had never overdrawn his account with them.

For the defence, it was proved, that on the 17th of June, 1855, one Montague John Tatham filed a petition for adjudication in bankruptcy against the bankers; that they were adjudged bankrupts on the same day, and afterwards surrendered; that they made a statement concerning the disposal of the securities in question, without examination, and not in pursuance of any order of the sitting commissioner; that they made this declaration for the general purpose of assisting the creditors, and for the special purpose of making a disclosure under the 7 & 8 Geo. IV. c. 29,

and that they were then questioned by the solicitor for the *fiat* as to the truth of the statement, and each answered (affirming its truth) "Yes." The commissioner had, previously to this, refused an application by counsel on behalf of the bankrupts to be permitted to examine them with reference to the statement as to the disposal of the securities, saying, "If any creditor applies for the bankrupts to be examined, he can do so; but, upon the bankrupts' own application, I refuse it."

The bankers were convicted, and sentenced to fourteen years' transportation.

In a recent case (*e*), having a considerable bearing upon the points above determined, it appeared that an agent, having been intrusted with a bill of lading, without the authority of his principals and in violation of good faith deposited the bill of lading with his bankers, for his own benefit, as a security for advances. He was charged with this offence before a magistrate. The depositions taken in support of the charge contained ample evidence to sustain it. Having afterwards become bankrupt, he was taken by his creditors and examined respecting the charge before a commissioner in bankruptcy, and he then made a statement in every respect in accordance with the evidence contained in the depositions. He was afterwards indicted on the same charge. On the trial his examination in bankruptcy was tendered by his counsel as a defence, as showing that he had disclosed the act before the commissioner in bankruptcy previously to being indicted for the offence, and that, therefore, he was not now liable to be prosecuted or convicted; the Court of Criminal Appeal unanimously held that this evidence of a disclosure was admissible under the plea of not guilty, but the majority of the Judges were, however, of opinion, that as the agent only stated before the commissioner matter which had been previously known, and previously proved before the magis-

(*e*) *Reg. v. Shcen*, 28 L. J., M. C. 91; Bell, C. C. 97.

trate, he had not made any disclosure within the meaning of the statute, and that, consequently, he was not entitled to its protection. The minority of the Judges, however, holding that, as the statement of the agent was obtained in the course of a compulsory judicial examination, instituted *bonâ fide* by the creditors for their own interest, it was a disclosure before the commissioner, notwithstanding the previous inquiry and publicity of the matter.

The liability affecting directors for making false reports of the solvency of their banks, and the prosecution and punishment of delinquent directors, officers, and managers of insolvent banking companies on winding-up, will form the subject of a separate consideration.

## CHAPTER XXXIII.

## DISCOUNTS.

MUCH of the business of bankers consisting in the discounting of bills of exchange, it is necessary to state some points of the law affecting this matter.

The rule has been stated, that if a person holding a bill of exchange delivers it to a banker to be discounted, or if, by the course of dealing between the customer and the banker, bills received by the latter, on account of the former, are considered by both parties as cash, *minus* the discount, so that the customer is at liberty to draw on the banker, as against those bills, beyond the amount of actual cash that may be standing to his account in the books, then, in the event of the bankruptcy of the banker, the assignees of the bankrupt are entitled to the bills. For where the banker discounts a bill for a customer, giving him credit for the amount of the bill, and debiting him with the discount, there is a complete purchase of the bill by the banker, in whom the whole property and interest in it vest, as much as in any chattels he possesses (*a*).

Therefore, discounting in this way makes the banker *the purchaser of the bill*.

If, moreover, a person discounts bills with bankers, and receives as part of the discount other bills not indorsed by the bankers, and these latter bills turn out to be bad, the bankers are not liable; for, having taken them without indorsement, the holder takes the risk on himself, inasmuch as the bankers, by not indorsing them, have refused to pledge their credit to their validity, and the

(*a*) *Carstairs v. Bates*, 3 Camp. 301. See *Ex parte Wakefield*, 1 Rose, 242; *Thompson v. Giles*, 2 B. & C. 422, and ante, p. 138.

transferee must be taken to have received them on their own credit only (*b*).

So a banker discounting a bill, whether for a customer or for a stranger, there being no indorsement by the customer or stranger, and the bill not being given in payment of an antecedent debt, is a mere purchaser, and, on the bankruptcy of the acceptor, has no recourse against the party from whom he took it (*c*).

A manager of a banking company had permission to carry on his separate trade; as a trader, he dealt with the company on the terms usual between banker and customer, and being possessed of certain bills in his character of trader, drawn and accepted by firms of good reputed credit, he deposited them without indorsing them, and obtained an advance upon them, his account at the time being already slightly overdrawn; therefore, this transaction was a loan, not a discount, and upon the bankruptcy of the drawers and acceptors, the manager was held bound to make good the loss to the bank (*d*).

Bankers discounting a customer's bills at a time when his account is largely overdrawn, and carrying the amount to the credit of his account, are holders for value, though no money actually pass (*e*).

Presumption  
in favour of  
bankers.

*Presumption in favour of Bankers.*—Such a degree of credit is given to bankers by the Courts, that *prima facie* they will be taken to have discounted with good faith. Thus, where a clerk was sent by his master, a customer of a bank, to ask for discount for a bill, but with orders to tell them, when he asked for it, the particulars of an

(*b*) *Eydell v. Clark*, 1 Esp. 447; *Emly v. Lye*, 15 East, 7; *Bank of England v. Newman*, 1 Ld. Raym. 442.

(*c*) *Bank of England v. Newman*, 1 Ld. Raym. 442; 12 Mod. 241.

(*d*) *Watkin v. Campbell*, 1 Jur., N. S. 131.

(*e*) *In re Corew*, 31 Beav. 39. For cases supporting the rule that a fluctuating balance may be a valuable consideration for a bill, see *Pease v. Hirst*, 10 B. & C. 122; *Richards v. Macey*, 14 M. & W. 484. The onus of proving such a consideration is upon the payee. *In re Boys*, L. R., 10 Eq. 467; 39 L. J., Chanc. 655.

arrangement between the holder and the master, the Court would not presume that the clerk told the bankers (who discounted the bill) these circumstances, but, on the contrary, presumed that they *bonâ fide* discounted the bill without notice of those circumstances, in the absence of proof to the contrary (*f*). But when A. fraudulently obtained possession of the acceptances of B., and got them discounted, and carried to his account by a banking company to which he was largely indebted at the time, and of which he was a director and local manager, it was held that the bank had notice, and could not be considered *bonâ fide* owners because of their connexion with A. (*g*).

*Set-off and Mutual Credit in case of Bankruptcy under* 32 & 33 Vict. c. 71, s. 39.—Palmer, having borrowed money from his bankers in Calcutta, deposited East India Company's paper with the bank to a greater amount than the debt, as a collateral security, and authorized the bank, in default of repayment of the loan by a given day, to sell the paper for reimbursement of the bank, rendering him any surplus. Before default in repayment of the loan he became insolvent: at the time of the insolvency, the bank were also holders of two promissory notes of Palmer & Co., which they had discounted for them before the transaction of the loan and the agreement as to the deposit of the Company's paper. The time for the repayment of the loan having expired, the bank sold the Company's paper, the proceeds of which, after satisfying the principal and interest due on the loan, produced a considerable surplus.

Set-off and mutual credit.

In an action by the assignees of Palmer & Co., against the bank to recover the surplus, it was held, that the bank could not set off the amount of the two promissory notes; and that the clause of mutual credit in the Bankrupt Act did not apply. For though the bank gave credit to Palmer for the notes they had discounted for him,

(*f*) *Middleton v. Barned*, 18 L. J., Exch. 433.

(*g*) *In re Carew*, 31 Beav. 39.

there was no corresponding credit given by him to them; it was uncertain whether there would be any money coming to him or not, and the credit was all on one side (*h*).

Bankers discounted for a customer bills of exchange to a large amount, placing the amount to the credit, and the amount of the discount, to the debit of themselves. The customer became bankrupt, having at the time a balance at the bank in his favour of 179*l.* 19*s.* 11*d.* The bills were indorsed by the bankrupts in blank, and some of them were paid by the acceptors *before* the bankruptcy; the others, far exceeding in amount the above sum, did not become *due* till some time *after* the bankruptcy. Before they became due, the assignees commenced an action for money lent, to recover the balance, and subsequently, but still before the bills became due, the bankers proved against the bankrupt's estate for the whole amount of the bills, deducting the balance of 179*l.* 19*s.* 11*d.*

There was held, in this case, not to be any purchase of the bills, but merely a loan of money upon them (*i*).

It is material to distinguish this case from the former: in that there was no mutual credit; the Company's paper was deposited for a particular purpose, and no credit was given for the surplus. Also, the duty of the assignees there was to redeem the paper immediately, and if they had done so, no debt whatever would have been due in respect of the loan. Here was a mutual credit, and the bankers being entitled to set off, the assignees could not prevent their having the benefit of it, by bringing the action too soon (*i*).

But though one of the debts constituting the mutual credit need not be due, it is necessary that the mutual credit should have existed before the bankruptcy. So a

(*h*) *Young v. Bank of Bengal*, 1 Moore, P. C. 150; but see *Naoraji v. Chartered Bank of India*, L. R., 3 C. P. 444; *London, Bombay and Mediterranean Bank v. Narraway*, L. R., 15 Eq. 93; *Astley v. Gurney*, L. R., 4 C. P. 714.

(*i*) *Alsager v. Currie*, 12 M. & W. 751, 757, 758. See *Starey v. Barns*, 7 East, 435.

bill drawn by a debtor and accepted by a creditor after the former had assigned his property to trustees under the Bankruptcy Act, 1861, but before registration thereof, cannot be set off against prior acceptances of the debtor, because the date of the deed and not the time of registration is to be looked to, and at the former time there was no mutual credit (*k*).

*Specific Appropriation of Proceeds on Discount.*—Bills were remitted to be discounted, the proceeds being directed to be applied in a particular way: the remittee did not get the bills discounted, but received the money on them when due. Before that time the remitters had stopped payment, having first desired to have the bills returned to them: and they became bankrupt before the bills were paid to the remittee. The latter had to refund to the assignees the whole of the money (*l*). And so bills remitted for sale, the proceeds to be applied to a particular purpose, remain the property of the remitters until the purpose is satisfied (*m*).

So, where a customer pays a sum of money into a bank, for the purpose of providing for particular bills, he being at the time indebted on advances to the bank to a larger amount, and they, instead of following his instructions, place the money to the credit of his account, and, consequently, the bills are refused acceptance, and whilst they remain unpaid in the hands of the holders the customer becomes bankrupt, his assignees may recover the whole of the sum from the bank (*n*).

A branch of the National Provincial Bank of England discounted for a customer a bill drawn by him, and accepted by A. This bill, which was for 365*l.*, was dated

(*k*) *Ex parte Ryder*, L. R., 6 Ch. Ap. 413; 40 L. J., Bank. 63; *Selby v. Graves*, L. R., 3 C. P. 594.

(*l*) *Buchanan v. Findlay*, 9 B. & C. 738. See p. 138.

(*m*) *Muttyloll Scal v. Dent*, 8 Moore, P. C. 319.

(*n*) *Hill v. Smith*, 12 M. & W. 618; *Farley v. Turner*, 26 L. J., Chanc. 710. See p. 138.

17th January, and was at three months, and would consequently become due 20th April. On the 19th the customer brought another bill to the bank, for the same sum as the former, dated 18th April, for the purpose of retiring the former. The manager of the bank consented to retire the former bill, but the course pursued was not strictly a retiring of the bill; for the course taken was, to send up to London the fresh bill, giving directions to their London agents to order payment of the original bill, which had been previously sent up to them by the manager. A. was credited in his account with the amount of the bill, 365*l.*, less the discount.

After some time, and various further transactions between A. and the bank had taken place, the bill of the 18th April proved to be forged and was dishonoured.

Under these circumstances it was contended, in an action by the bank on the first bill against the acceptor, that what had been done by the bank in regard to the first bill was equivalent to a payment of it, as they had given the drawer credit for the sum for which it was drawn, less the discount; but to this the Court did not assent (*o*).

Where a customer places in the hands of his bankers two bills for 1,000*l.*, indorsed by him, for the amount of which it is agreed he shall draw, the bankers having refused to discount them, and the customer only draws for 65*l.*, and the bankers employ a broker to discount the bills, and become bankrupt shortly after the bills are deposited, the customer is entitled to the proceeds of the bills (*p*).

Re-discount-  
ing.

*Re-discounting.*—A customer drew a bill, which was accepted, payable at his bankers'; he discounted it with the bankers, indorsing it to them; they re-discounted and indorsed it to a third person.

On the maturity of the bill it was presented by the

(*o*) *Bell v. Buckley*, 25 L. J., Exch. 163; 11 Exch. 631.

(*p*) *Ex parte Edwards*, 2 M., D. & De G. 625.

holder at the bank, along with other bills payable there, all indorsed by the bankers; all these were paid without any indication whether the bankers paid as indorsers or as agents for the acceptors; the account of the acceptor of this bill was overdrawn at this time, and he stopped payment the same day.

Next day notice of dishonour was given by the bankers to the customer, and he was debited with the amount of it.

It was left to the jury to say whether the bankers paid as indorsers on their own account, or as agents of the acceptor. The jury found that they paid in the former character, which was tantamount to finding that the bill was dishonoured, and they had a verdict, and the Court held the bankers to have had a right to pay as indorsers, reserving to themselves time to inquire whether they would honour the bill or not, and that there was no obligation on them to inform the holder in what capacity they paid (*q*).

*Accommodation Bills.*—Where bankers discount for a customer, the drawer, a bill accepted for his accommodation, which is dishonoured, and after that event, have notice that it was an accommodation bill, and are requested by the customer not to apply to the acceptor, to which they assent, and afterwards the customer's account with them shows a balance in his favour to a larger amount than the bill, the bankers are bound to discharge the bill out of the balance, and cannot keep it as a security for the fluctuating balance which might ultimately become due to them, and, therefore, if they sue the acceptor, they will be non-suited (*r*).

It makes no difference that after the balance has been in his favour, as above stated, the customer becomes greatly indebted to the bank, and fails before action (*r*).

(*q*) *Pollard v. Ogden*, 2 El. & Bl. 459; see *Attenborough v. Mackenzie*, 25 L. J., Exch. 244.

(*r*) *Marsh v. Houlditch*, Chitty on Bills, 283, n., 10th ed.; compare *Hammersley v. Knowlys*, 2 Esp. 665. As to what amounts to an accommodation bill, see *In re London, Bombay, &c. Bank*, L. R., 9 Ch. 686; 48 L. J., Bank. 683.

*Death of Drawee.*—Bankers, having discounted for a customer (who did not indorse) a bill drawn by B. on A., another customer, and accepted by him, payable at the bankers' house, on the morning of the day on which it became due, wrote it off in A.'s account to his debit, having at that time in their hands 1,421*l.* to his credit. The bill was for 467*l.* A. was at this time dead, but this was unknown to the bankers at the time they debited A.

The bankers were held to be entitled, when the bill became due, to reimburse themselves out of the acceptor's funds in their hands, having no notice of the death (s).

Conditional  
indorsement.

*Conditional Indorsement.*—The payee of a foreign bill of exchange (one Robertson) annexed a condition to his indorsement before acceptance, thus, "Pay the within sum to Messrs. Clerk and Ross, or order, upon my name appearing in the Gazette as ensign in any regiment of the line, between the 1st and 64th, if within two months from this date, R. Robertson."

The bill was drawn upon and accepted by Messrs. Kensington & Co., bankers, in London, but not till after it was indorsed by the payee, as above, and after it was indorsed by Clerk and Ross. There were several mesne indorsements, until it came by indorsement to the Bank of England, who discounted it. When the bill arrived at maturity, including the days of grace, the Bank of England presented it to Messrs. Kensington, by whom it was paid.

Robertson's name never having appeared in the Gazette as ensign in any regiment of the line, the condition of the indorsement was not performed; and, upon Robertson suing the acceptors for the amount of the bill, the Court considered him to be entitled to recover, because Messrs. Kensington had accepted after the condition had been superadded to the bill, and that condition had been superadded to the bill at the outset, and before it got into cir-

(s) *Rogerson v. Ladbroke*, 1 Bing. 93.

ulation, and the condition not having been performed, and the acceptance having been made with knowledge of the restriction, the property, in such case, reverted to the payee, who had a right to come upon the acceptors at maturity, just as if he had not indorsed at all (*t*).

Hence it follows, that such a bill cannot be safely discounted without ascertaining that the condition on which the payee indorses has been satisfied (*u*).

It has, however, been questioned whether it is allowable by the custom of merchants to indorse a bill of exchange with a condition which restrains the indorsee from indorsing over in a certain event (*x*).

*Restrictive Indorsements.*—The payee or indorsee of a bill of exchange having the absolute ownership in, and the power of disposal over, it, has likewise the power of limiting its payment to whom he pleases, and of designating the purpose for which such payment shall be applied, and so to restrain its negotiability (*y*). Some considerable difficulty frequently arises in deciding what does and what does not amount to a restrictive indorsement. An indorsement to “A.,” without mentioning “or order,” will not amount to a restrictive indorsement, nor prevent the bill from being negotiated; for, the Courts leaning strongly in favour of the negotiability of a bill, nothing short of express words or necessary implication will have that effect (*z*). The words “Pay to A. B. only,” or “A. B. and no one else,” on the other hand, would clearly amount to a restrictive indorsement, so as neither to authorize indorsement over or payment to any other person (*a*).

Where the person uses words to show that the restrictive

(*t*) *Robertson v. Kensington*, 4 Taunt. 30; *Savage v. Aldren*, 2 Stark. 232.

(*u*) *Ibid.*

(*x*) *Soares v. Glyn*, 8 Q. B. 24; 14 L. J., Q. B. 313.

(*y*) Story on Bills, p. 229; Chitty on Bills, 174; Byles, 159; *Eddie v. East India Company*, 2 Burr. 1227; 1 Bl. R. 295.

(*z*) *Acheson v. Fountain*, 1 Str. Rep. 557; *Eddie v. East India Company*, supra; Story, 230; Chitty, 174; Byles, 151, 161.

(*a*) Story, 231; Chitty, 174; *Eddie v. East India Company*, supra.

indorsement was made to the restricted indorsee as the agent or trustee of the indorser, or of some third party named by him, as "Pay to A. B. or order for my use," "Pay to A. B. for my account," "Pay to A. B. for the use of C. D.:" such indorsement, though it would restrain the negotiability of the bill, so far as to prevent the indorsee from indorsing or transferring it so as to convey any beneficial interest in the bill, would not, it would seem, necessarily restrict him from indorsing it so as to convey a right of action upon it; but every subsequent holder would receive the money subject to the original designated appropriation thereof, and, if he voluntarily assisted or aided in any other appropriation, it would be a wrongful conversion, for which he would be responsible (*b*). A banker, therefore, discounting such a bill, does it at his peril, and is bound to see to the application of the money paid by him (*b*). So, where a bill of exchange was indorsed by the payee generally to A., and by him to B., in these words, "Pay to B. or his order for my use," and B. applied to his bankers to discount the bill, and they, without making any inquiry did so, and applied the proceeds to the use of B., it was held that the indorsement was restrictive, and that the property in the bill remained in A., and that he was entitled to recover the amount of the bill from the bankers (*c*).

The words, "the within must be credited to B., value on account," have been held to constitute a restrictive indorsement (*d*); but not to the words "value in account with Oriental Bank" (*e*).

Acceptances  
per procura-  
tion.

*Acceptances per Procuracion.*—An acceptance "*per proc.*" is an express notice to a person taking the bill, that the authority of the agent is limited, and, consequently, a

(*b*) See *Murrow v. Stuart*, 8 Moore, P. C. 273. This case is contrary to the doctrine laid down in *Byles and Bayley* as to this kind of restrictive indorsement.

(*c*) *Sigourney v. Lloyd*, 8 B. & C. 622.

(*d*) *Archer v. Bank of England*, Doug. 638.

(*e*) *Buckley v. Jackson*, L. R., 3 Ex. 135.

banker who discounts the bill cannot maintain an action against the principal, if the agent has exceeded his authority (*f*). But an acceptance in these words, "for Richardson & Son, Thomas Popple," is not equivalent, in mercantile law, to the form "*per proc.* Richardson & Son, Thomas Popple." The former expression does not, like the latter, import a special and a limited authority to do a specific act, nor does it put the drawer of a bill, accepted in that form, upon discovery or inquiry, whether the agent has exceeded his authority or not (*g*).

*Indorsement per Procuracion.*—So an indorsement of a bill of exchange, "*per proc.*," is an express intimation that the person indorsing professes to act under an authority from some principal, and imposes upon an indorsee, or a banker discounting the bill upon the faith of such indorsement, the obligation of ascertaining that the person so indorsing is acting within the limits and terms of his authority; and, consequently, if the indorsement is wholly unauthorized by the principal, the banker will not be entitled to recover against him (*h*).

Indorsement  
*per procura-*  
*tion.*

*Agents.*—A person who indorses a bill as agent; though if he has no authority to do so, cannot be rendered liable on the bill, even although the plaintiff show that he acted *malà fide* (*i*). He may, however, be made liable on

(*f*) *Stagg v. Elliott*, 12 C. B., N. S. 373; 31 L. J., C. P. 260; *Alexander v. Mackenzie*, 6 C. B. 766.

(*g*) *O'Reilly v. Richardson*, 17 Ir. C. L. R. 74.

(*h*) *Alexander v. Mackenzie*, 6 C. B. 766; 18 L. J., C. P. 94. In mercantile transactions there are two forms of indorsement of negotiable instruments by an agent: one simply "p.," "pro.," "for.," which expresses an authority generally; the other, "*per pro.*," or "*p. p.*," which expresses an authority created by procuracion or power of attorney; and, where a bill of lading was indorsed by an agent in the first of these forms, it was held that the indorsement was not so irregular on the face of it as to render a banker who was instructed to accept the drafts of a third person on being handed a clean bill of lading of a cargo consigned to the latter liable for neglect of duty. *Ulster Bank v. Synnott*, 5 Ir. R., Eq. 595.

(*i*) *Wilson v. Barthrop*, 2 M. & W. 863; *Polhill v. Walter*, 3 B. & Ad. 114.

an implied warranty that he had the authority he represented himself as having (*k*). An agent applied to a banking company on several occasions to discount bills drawn by his principal, and at the commencement of the transactions with them informed them who the drawer and acceptors were of a bill which he applied to them to discount, and they agreed to discount it without requiring the agent's indorsement. Several subsequent discounts took place under similar circumstances; but upon some of the bills offered, they required and obtained the agent's indorsement. The acceptances turned out to have been forged by the principal, of which fact the agent was wholly unaware.

The agent became bankrupt, and it was held, there being nothing to show that the agent had not handed over the proceeds of the bills to the principal, or that the proceeds could be recalled, that the banking house could not prove upon the bills which the agent had not indorsed (*l*).

A person receiving a bill to get discounted has no authority to deal with it otherwise than for discount, and a deposit of it along with other bills, with a bill broker, as a security for advances, is beyond the scope of the authority, and passes no property (*m*).

*Bankers' Commission.*—With regard to commission, it seems obvious, and has been expressly laid down, that a banker is as well entitled to his commission for his trouble in transacting money negotiations, as a factor, for his trouble in effecting sales; commission is a lawful charge, provided it is reasonable and usual (*n*), this last fact being

(*k*) *Collen v. Wright*, 7 E. & B. 301; *Polhill v. Walter*, *supra*.

(*l*) *Ex parte Bird*, 4 De G. & S. 273. A person who does not indorse a bill may, nevertheless, be compelled to repay the money he has obtained on it, should it turn out a forgery, as on a consideration that has failed. *Jones v. Ryde*, 5 Taunt. 488; *Polhill v. Walter*, 3 B. & Ad. 144.

(*m*) *Herschfeld v. Brown*, 3 F. & F. 219.

(*n*) *Curtis v. Livesey*, cited 4 M. & S. 197; *Ex parte Gwyn*, 2 Deac. & C. 12; *Winch v. Fenn*, 2 T. R. 52, n.

a question for the jury (*o*). Commission may also be charged for the trouble of obtaining the acceptance and payment of bills (*p*).

Charging commission for collecting bills does not impose upon the bankers a liability to give notice of dishonour in case the bills are not paid on presentment (*q*).

(*o*) *Masterman v. Cowrie*, 3 Camp. 488; *Carstairs v. Stein*, 4 M. & S. 192; *Hammett v. Yea*, 1 B. & B. 144.

(*p*) *Baynes v. Fry*, 15 Ves. 120.

(*q*) In the case of *Ashworth v. Miller*, tried before Mr. Justice Mellor and a special jury at Manchester, 22nd March, 1865, it appeared that it was an action brought to recover from the defendant, as the public officer of the Manchester and Liverpool District Bank, the value of a bill of exchange for 272*l.* 9*s.* 6*d.*, which had been handed to them by the plaintiff for collection, and of the dishonour of which they had not given him due notice, whereby he was unable to recover against his indorsers. It appeared that the plaintiff was a cotton-waste dealer and spinner at Rochdale, and the banking company had a branch bank there with a manager. In September, 1864, the plaintiff took the bill from Fielden & Co., of Rochdale, in discharge of an account for 166*l.*, handing them the difference. The plaintiff kept no account with the bank, but had been in the habit for years of handing them cheques for collection, for which the bank charged commission and handed him the proceeds. The bill became due on the 24th of November, 1864, and on the 18th of November the plaintiff left it with the cashier of the bank, who said he would do the business for him. On the 30th of November, the plaintiff called again at the bank, and was then informed that the bill was dishonoured, got the bill back, and paid the bank charges—22*s.* 8*d.* Upon the plaintiff, on the same day, applying to Fielden & Co., they disclaimed all liability on account of the delay, and so did the previous indorsers upon being applied to. The defence on the part of the bank was that they never gave notice of dishonour to casual customers, who were told to call on the day the bill would be returned, and that such was the custom and usage of bankers; and, moreover, that in the present instance the plaintiff had actually been told to call on the 26th of November, and that it was his neglect that he did not call on that day. The plaintiff denied that he had been told to call either on that occasion or on any other. The jury returned a verdict for the defendant, as they were of opinion that the bank had established their case on the ground of general usage among bankers. Mr. Morse, in his *Treatise on Banks and Banking*, makes the following pertinent observations on the subject of bankers charging commission for the collection of mercantile paper:—"Sometimes," he says, at page 323, "banks charge a commission for collection where the business is required to be done in distant places. Sometimes they do it without charge, trusting to the indirect profits and advantages which may be expected to accrue by reason of the chance of the money being left uncalled for during a few days following its actual receipt and their consequent use of it for that time, or from the hope of attracting customers and increasing their business by offering such facilities without extra charges. These motives of self-interest, which must always be supposed to influence the bank, when it consents to collect without direct compensation, are regarded as a sufficient and valuable inducement for the undertaking to collect, and prevent the bank from availing itself of the plea that its contract was without consideration." With respect

to the obligation of collection undertaken by bankers, Mr. Morse, in a previous part of his work, page 322, says:—"Collection upon notes, drafts, bills of exchange, and, in short, upon every species of business paper, is a duty very commonly undertaken by banks on behalf of customers. After the collection is made the bank becomes a simple contract debtor for the amount, less the commission, if any has been charged. If the party for whom the collection was made is a regular depositor, the sum will be properly placed to his credit upon his general deposit account, unless a peculiar usage or special instructions demand some different course of dealing. If the party has no deposit account the bank simply owes him the amount on demand."

## CHAPTER XXXIV.

## BANK OF ENGLAND.

*Corporation.*—By the National Debt Act, 1870, (33 & 34 Vict. c. 71,) s. 72, the Bank of England, which was originally created a corporation by the crown by virtue of a statute in the year 1694 (*a*), is to continue a corporation until all stock is duly redeemed by parliament.

*Directors.*—By 35 & 36 Vict. c. 34, s. 1, section 52 of the 8 & 9 Will. III. c. 20 (which section relates to elections of directors of the Bank of England), shall have effect as if seven-eighths had been therein mentioned instead of two-thirds.

By sect. 2, any new or altered bye-law from time to time made by a General Court of the Corporation of the Bank of England for the execution of the act, not being repugnant to the law of England, shall be effectual without further confirmation or approval.

*Deposits and Discounts.*—The Bank of England is largely engaged as a bank of deposit and of discount; and in these respects nearly, if not altogether, the same rules apply to its regulations and its relations to customers as have been stated in respect of banking establishments generally. The Bank of England in its trading capacity is in the same position as an ordinary bank. Therefore, where a customer was in the practice of making his acceptances payable at the Bank of England, and, in a particular instance, an acceptance of his was presented at

(*a*) 5 & 6 Will. 3, c. 20, s. 19. Revised Edition of Statutes, 1871.

a quarter after nine, and left till eleven o'clock, A.M., and then refused payment for want of assets, and being afterwards, at six, P.M., presented again by a notary, was again refused payment by a person stationed by the bank, although the bank, before six o'clock, had received sufficient assets to cover the bill, it was considered that the bank was not liable at the suit of the acceptor for negligence in dishonouring his bill, because the second presentment took place after banking hours (*b*).

The Bank of England does not, as a general rule, receive deposits repayable with interest (*c*).

*Branch Banks.*—The 7 Geo. IV. c. 46, s. 15, empowers the Bank of England to appoint agents to carry on their business at branch establishments in any place in England. A notice of an act of bankruptcy given to the bank in London, in time for communication to be made to the branch banks, will be sufficient to bind the bank in respect of transactions with the bankrupt at any of these branches (*d*). But each branch is to be treated as a distinct establishment for the purpose of giving notice of dishonour of a bill of exchange (*e*).

By the same statute, notes or bank post bills issued at any branch are payable in coin there, as well as in London, but when issued in London, they are not payable at the branch banks (*d*).

*Bank of Issue.*—The privileges of the bank, as a bank of issue, will be treated of separately (*f*).

(*b*) *Whitaker v. Bank of England*, 1 C. M. & R. 744.

(*c*) In September, 1864, however, the bank allowed interest at the rate of 5 per cent. on a large sum of money which the Metropolitan Board of Works was bound by Act of Parliament to keep at the bank, as an extraordinary exception to its custom.

(*d*) *Willis v. Bank of England*, 4 A. & E. 21.

(*e*) *Brown v. London and North-Western Railway Company*, 4 B. & S. 337. See *Prince v. Oriental Bank Corporation*, L. R., 3 App. Ca. 325; *Woodland v. Feare*, 9 E. & B. 325; *Garnett v. McKewan*, L. R., 8 Ex. 10.

(*f*) See post, Chapter XXXVII., Banks of Issue, and Chapter XXXVIII., Bank Notes.

*Proving in Bankruptcy.*—The Bank of England being a body politic and incorporate (*g*), may prove in bankruptcy by an agent, provided the agent, in his declaration of proof, states that he is authorized under seal to make such proof (*h*). For this purpose, the agent is usually authorized by a power of attorney under the seal of the bank (*i*).

*Agent of the Government.*—The Bank of England is the banker or agent of the Government for the management of the National Debt, and the Bank of Ireland acts in a similar capacity in regard to the public debt of Ireland. The unredeemed portion of these debts is represented by stock and terminable annuities, transferable at the Bank of England and at the Bank of Ireland, with interest payable half-yearly.

*Stock in the Public Funds.*—The existing public stocks are the Consolidated Three Pounds per Centum Annuities, the Reduced Three Pounds per Centum Annuities, New Five Pounds per Centum Annuities, New Three Pounds per Centum Annuities, New Three Pounds Ten Shillings per Centum Annuities, and Two Pounds Ten Shillings per Centum Annuities, which form part of the permanent, funded, consolidated, or National Debt of the United Kingdom of England, and are transferable at the Banks of England and of Ireland. The nature of stock and money in the Public Funds is this: stock is a chose in action; it has no locality, except for the purposes of probate and administration; it does not fall under the head of goods and chattels, so as to pass by a grant of *bona et catalla felonum* (*k*); it has been said neither to be a chattel, nor to

(*g*) 5 & 6 Will. & M. c. 20, s. 20.

(*h*) The Bankruptcy Act, 1869, s. 80 (par. 7), and Bank Gen. Reg. 69.

(*i*) *Ex parte Bank of England*, 1 Swanst. 19; *Naylor v. Mortimore*, 10 Jur., N. S. 1001, 1003.

(*k*) *Rex v. Copper*, 5 Price, 217.

have any resemblance to a personal chattel (*l*); it cannot be sued for as money (*m*), it does not pass under the term "money," in a will (*n*); but it does pass under the term "securities for money," unless the expression is controlled by the context. However, stock in the funds has been said to pass or not under the word "moneys," or the word "goods," or the word "chattels," according to the whole context of the will, and either "goods," or "chattels," used simply, and without qualification, will pass it in a will (*o*); and where the testator did not bank with the Bank of England, a bequest of "all my money in the Bank of England," passed stock in the funds (*p*).

*Stock Certificates.*—The National Debt Act, 1870, enables the holders of public stocks in England and Ireland to convert their stock into certificates to bearer, having coupons attached for the payment of the dividends; and the 26 & 27 Vict. c. 73, is a similar enactment in favour of holders of India stock.

*India Stock.*—The capital stock of the old East India Company was not government stock (*q*), nor is the 5 per cent. stock created under the 22 & 23 Vict. c. 39, and subsequent acts, for the loans contracted in this country for the use of the Indian government (*r*). Both these

(*l*) *Wildman v. Wildman*, 9 Ves. 119.

(*m*) *Nightingale v. Devisme*, 2 W. Bl. 684.

(*n*) *Ex parte Simpson*, 1 De Gex, 9; *Gosdon v. Dotterill*, 1 M. & K. 56; *Willis v. Plaskett*, 4 Beav. 208; *Douglas v. Congreve*, 1 Keen, 410; *Hotham v. Sutton*, 15 Ves. 319.

(*o*) *Kendall v. Kendall*, 4 Russ. 360. See *Willis v. Plaskett*, 4 Beav. 208; *Phillips v. Eastwood*, 1 Ll. & Go. 291.

(*p*) *Gallini v. Noble*, 3 Mer. 691.

(*q*) *Brown v. Brown*, 4 Kay & J. 704. By 36 Vict. c. 17, provision is made for the redemption or commutation of this stock, and 36 Vict. c. 32, provides the funds for the purpose.

(*r*) The stock is transferable at the Bank of England, and the dividends payable there by virtue of the 23 & 24 Vict. c. 102, and 24 Vict. c. 3, s. 9, and at the Bank of Ireland by virtue of the 25 Vict. c. 7. By 34 & 35 Vict. c. 29, dividend warrants may be sent by post. By 27 & 28 Vict. c. 50, assignments and transfers of India stock in the Bank of Ireland are valid, although not accepted in writing.

stocks are charges only on the territorial revenues of India. But trustees may invest trust moneys in these stocks without being guilty of a breach of trust, unless expressly prohibited by the terms of their trust (*s*).

By 23 Vict. c. 5, s. 2, transfers of the territorial debt of India, or of the Indian government loans registered in the books of the Indian office in London, or in the Bank of England, are exempt from stamp duty.

Indian government notes, or the certificates or stock issued in lieu thereof, registered in the books of the bank or of the India office in London for the payment of interest, are to be deemed personal estate of a person dying in England, for the purpose of probate duty (*t*).

*Contracts for the Sale of Stock.*—A contract for the sale of stock differs from a contract for the sale of a specific chattel, inasmuch as stock does not belong to the head of chattels; and, therefore, a contract for the sale of stock would be satisfied by the delivery of any stock of the description bargained for; consequently, what is usually called a contract for sale in such a case, does not mean an actual sale, but only a contract to deliver, and such contract is not a contract for the sale of “goods, wares or merchandise,” within the 17th section of the Statute of Frauds, so as to require a memorandum in writing (*u*). The contract requires to be stamped in order to be valid (*x*).

(*s*) 22 & 23 Vict. c. 35, s. 32; *In re Colne Valley Act*, 29 L. J., Chanc. 33; *In re Langford*, 31 L. J., Chanc. 334. By 36 Vict. c. 32, s. 16, the capital stock created under that act for the redemption or commutation of the capital stock of the East India Company is to be deemed India stock within the 22 & 23 Vict. c. 35, s. 32, unless or until Parliament shall otherwise provide.

(*t*) 23 Vict. c. 5, s. 1.

(*u*) *Heseltine v. Siggers*, 1 Exch. 856.

(*x*) By the Stamp Act, 1870, Sched., tit. “Contract Note,” any note, memorandum or writing, commonly called a “contract note,” or by whatever name the same may be designated, for or relating to the sale or purchase of any stock or marketable security of the value of 5*l.* or upwards, is subject to a penny stamp duty.

By sect. 69 (1), the duty on a contract note may be denoted by an

Transfer of  
stock.

*Transfer of Stock.*—By the National Debt Act, 1870, s. 22, in the offices of the respective accountants-general of the Banks of England and Ireland books shall be kept wherein all transfers of stock shall be entered. Every entry shall be conceived in proper words for the purpose of transfer, and signed by the party making the transfer, or, if he is absent, by his attorney thereunto lawfully authorized by writing under his hand and seal, and attested by two or more credible witnesses. The person to whom a transfer is so made may, if he thinks fit, underwrite his acceptance. And no other mode of transferring stock shall be good in law, except where otherwise provided by act of parliament. By sect. 24, the Banks of England and Ireland before allowing any transfer of stock may, if the circumstances of the case appear to them to make it expedient, require evidence of the title of any person claiming a right to make the transfer. That evidence shall be the declaration of competent persons made under the Statutory Declarations Act, 1835, 5 & 6 Will. IV. c. 62, or of such other nature as the banks require. The bank, however, is not bound to accept as sufficient evidence of the death of a stockholder on a joint account in its books such proof as would satisfy the Court of Chancery (*y*). The stock vests, by the transfer, without acceptance (*z*).

Where a statute declared the stock created under it to be transferable as the act directed, and not otherwise, and enacted, that the entries of transfer shall be signed by the

adhesive stamp, which is to be cancelled by the person by whom the note is first executed.

By sect. 69 (2), every person who makes or executes any contract note chargeable with duty, and not being duly stamped, shall forfeit the sum of 20*l*.

By sect. 69 (3), no broker, agent or other person shall have any legal claim to any charge for brokerage, commission, or agency, with reference to the sale or purchase of any stock or marketable security of the value of 5*l*. or upwards mentioned or referred to in any contract note, unless such note is duly stamped.

(*y*) *Prosser v. Bank of England*, 41 L. J., Chanc. 327.

(*z*) *Rex v. Gade*, 2 Leach, C. C. 732.

parties making such transfers, and that any person to whom such transfer shall be made shall underwrite his acceptance thereof, and that no other method of transferring such stock shall be valid; and a person alleging himself to be a holder of stock brought an action against the Bank of England for not paying dividends, it was held that he could not dispute the title of the transferee, on the ground that such transferee had not underwritten his acceptance, the claimant of the dividends having himself executed the transfer in the prescribed mode, and pocketed the price of the stock (*a*).

If the Bank of England makes an unreasonable delay in passing a power of attorney for the transfer of stock, they are liable in damages for any loss sustained in consequence; they are to have time to take all reasonable means for clearing up any doubt as to the authenticity of the power of attorney, which they may reasonably entertain (*b*).

This being the case, it follows,—and it follows *à fortiori*,—that they are responsible in an action if they refuse to transfer, and a *mandamus* does not therefore go to compel them to transfer (*c*).

*Transfer by Executors or Administrators.*—By the National Debt Act, 1870 (*d*), s. 23, the interest of a stockholder, dying, in stock shall be transferable by his executors or administrators, notwithstanding any specific bequest. The Bank of England or of Ireland shall not be required to allow any executors or administrators to transfer any stock until the probate of the will of, or the letters of administration to, the deceased has or have been left with the bank for registration, and may require all the executors who have proved the will to join in the transfer. Although there is no specific bequest, the bank is bound to permit

(*a*) *Foster v. Bank of England*, 8 Q. B. 689.

(*b*) *Sutton v. Bank of England*, 1 C. & P. 193; R. & M. 52.

(*c*) *Rex v. Bank of England*, 2 Dougl. 524; Com. Dig. Action on the Case, A. 4.

(*d*) 33 & 34 Vict. c. 71.

the executor to transfer unless it can be shown that he has assented to the legacy (c).

By joint proprietors and survivors.

*By Joint Proprietors and by Survivors.*—A joint tenant of stock cannot legally transfer his share; for virtually, at least in the case of two joint tenants, that would amount to the power of transferring the whole (d).

Stock standing in the names of two persons jointly, on the death of one becomes, at law, the absolute property of the survivor, and therefore the administrator of the deceased cannot maintain against the survivor an action to recover the deceased's share, although, if there is a trust in favour of a third person, the survivor may be responsible in a Court of Equity for the disposition of the property according to the trust (e).

When stock has been purchased in the joint names of two persons, out of money standing to their joint account in the bank, it is not necessarily to be considered as held in joint tenancy, but the origin of the money and the acts and intentions of the parties may be looked to, and a conclusion in favour of a tenancy in common drawn from these circumstances (f). Two sisters, being tenants in common of estates, had money arising from the rents standing to their joint account in the bank. Part of the money was from time to time invested in the purchase of stock in their joint names, and part on mortgage, the mortgaged premises being conveyed to them as tenants in common. Each sister, by her will, affected to dispose of her share of the stock: it was held, that they were entitled to the stock as tenants in common and not as joint tenants (g). But where two sisters carried on business as farmers, and

(c) *Franklin v. Bank of England*, 9 B. & C. 156.

(d) *Sloman v. Bank of England*, 14 Sim. 488. See further as to the right of survivorship, *In re Eykyn*, 6 Ch. D. 115; *Timbridge v. Cord*, 25 L. T. 150; *Batstone v. Salter*, L. R., 10 Ch. 431.

(e) *Crossfield v. Such*, 8 Exch. 825; 22 L. J., Exch. 325.

(f) *Robinson v. Preston*, 27 L. J., Chanc. 395; 4 Kay & J. 505. See *Morley v. Bird*, 3 Ves. 631; *Lake v. Gibson*, 1 L. C. 198.

(g) *Robinson v. Preston*, 27 L. J., Chanc. 395; 4 K. & J. 505.

had a joint account at their bankers, and an establishment and purse in common, and invested part of their money in the purchase of consols, in their joint names, and had a balance due to them on their banking account, besides a sum due from their bankers on deposit notes, on the death of one, the two sisters were considered to be joint tenants of the consols, and tenants in common of the balance and of the deposit notes (*h*).

Two sisters, spinsters, executrices and beneficiaries under their father's will, transferred a portion of the fund bequeathed to them as tenants in common into their joint names, and afterwards out of the proceeds of that of which they were tenants in common purchased stock in their joint names. They lived together, had all things in common, and made mutual wills in each other's favour. Held, first that the transfer made them joint tenants of the fund transferred, and secondly, that they were joint tenants of the stock afterwards purchased out of the proceeds of a fund of which they were tenants in common (*i*).

*Powers of Attorney.*—A power of attorney, to transfer stock, is revocable, by a stockholder acting personally for himself, without deed (*k*). So is a power to receive dividends (*l*). Stock may be legally transferred under a power of attorney after the death of the grantor, if without notice of his death (*m*). So after the revocation of the power, if before notice of the revocation (*n*). Powers of attorney for the transfer of stock, or for the receipt of dividends, are subject to certain stamp duties (*o*).

(*h*) *Bone v. Pollard*, 24 Beav. 283.

(*i*) *In re Hughes*, 24 L. T. 415.

(*k*) *Rex v. Wait*, 11 Price, 518; 7 Moore, 473.

(*l*) *Clark v. Laurie*, 26 L. J., Exch. 36.

(*m*) *Kiddill v. Farnell*, 3 Sm. & G. 428; 26 L. J., Chanc. 818.

(*n*) *Story on Agency*, s. 470, 5th edit.

(*o*) The stamp duties on letters or powers of attorney are regulated by the Stamp Act, 1870. They are as follows:—

(1.) For the receipt of the dividends or interest of any stock:	£	s.	d.
Where made for the receipt of one payment only ....	0	1	0
In any other case .....	0	5	0

Forged  
powers of  
attorney.

*Transfer of Stock under Forged Powers of Attorney.—*

A forged power of attorney has no effect to transfer stock standing in the name of A. to the name of B.; consequently, if the bank transfers A.'s stock under a forged power of attorney, the bank will be liable to replace A.'s stock (*p*). A. may recover damages against the bank for not making a transfer from A. to a purchaser (*p*).

If, however, A. had knowledge of the forgery, and refused, or omitted to apprise the bank of it, such conduct would disable him from recovering (*q*).

If one of two trustees of stock forges the signature of his co-trustee to a power of attorney, and under it sells out stock and absconds, the bank is compellable, in a Court of Equity, to re-invest the stock in the name of the other trustee (*r*).

If the common seal of a corporate body holding stock is improperly affixed to a letter of attorney without the

	£	s.	d.
(2.) For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money, not exceeding 20 <i>l.</i> , or any periodical payments not exceeding the annual sum of 10 <i>l.</i> ( <i>not being hereinbefore charged</i> ) .....	0	5	0
(3.) For the sale, transfer or acceptance of any of the government or parliamentary stocks or funds:			
Where the value of such stocks or funds does not exceed 20 <i>l.</i> .....	0	5	0
In any other case .....	0	10	0
(4.) Of any kind whatsoever not hereinbefore described .....	0	10	0
(5.) Letter or power of attorney for the receipt of dividends of any definite and certain share of the government or parliamentary stocks or funds producing a yearly dividend of less than 3 <i>l.</i> is exempted.			

By sect. 103, a letter or power of attorney for the sale, transfer or acceptance of any of the government or parliamentary stocks or funds, duly stamped for that purpose, is not to be charged with any further duty by reason of containing an authority for the receipt of the dividends on the same stocks or funds.

By sect. 104, a writing under hand only containing an order, request or direction from the owner or proprietor of any stock to any company, or to any banker, to pay the dividends or interest arising from such stock to any person therein named, is not chargeable with duty as a letter or power of attorney.

(*p*) *Coles v. Bank of England*, 10 A. & E. 449; *Hume v. Bolland*, 1 C. & M. 130; *Davis v. Bank of England*, 2 Bing. 393.

(*q*) *Stracy v. Bank of England*, 6 Bing. 754.

(*r*) *Stoman v. Bank of England*, 14 Sim. 475; *Midland Railway Company v. Taylor*, 8 Jur., N. S. 419, H. L.

knowledge or consent of the corporation (even though affixed by their agent), and a transfer is made in consequence, the bank is liable unless the corporation has been guilty of negligence, or has subsequently ratified the act.

In fact, it is the duty of the bank to prevent the entry of a transfer in their books until satisfied that the person who claims to be allowed to make it is duly authorized so to do. Were the law otherwise, the whole property of every stockholder would be at the mercy of the bank clerks.

It is felony to forge any power of attorney for the transfer of any stock at the Bank of England or of Ireland (s), or to forge any name, handwriting or signature, purporting to be the name, handwriting or signature of a witness attesting the execution of such power of attorney (t).

*Transfer into Fictitious Names.*—If a bankrupt, for the purpose of defrauding his creditors, purchases stock, of which he obtains the transfer into a fictitious name, a Court of Equity will afford relief to the creditors, by ordering the Bank of England to erase the fictitious name, and insert that of the bankrupt as the transferee (u). Fictitious names.

*Forging Transfers.*—It is felony to forge the transfer of any share or interest of or in any stock transferable at the Bank of England or at the Bank of Ireland (x).

*Personating Stockholders.*—The personating of an owner of stock in the funds, or of the dividends, and thereby endeavouring to transfer the stock or receive the dividends, is felony (y).

*Mortgage of Stock.*—A mortgagee who has advanced on the security of stock for a fixed period is bound, in the Mortgage of stock.

(s) 24 & 25 Vict. c. 98, s. 2.

(t) Ibid. s. 4.

(u) *Green v. Bank of England*, 3 Y. & C. 722; 32 & 33 Vict. c. 71, s. 22.

(x) 24 & 25 Vict. c. 98, s. 2.

(y) Ibid. s. 3.

absence of express stipulation to the contrary, to return the identical stock pledged at the expiration of the loan, and for this purpose stock is as capable of identification as any other security. If he sells the stock in pledge during the currency of the loan, he is accountable to the mortgagor for any profit made by the sale (z).

*Bank Books.*—Making false entries or altering any words or figures in the books of the Bank of England or of Ireland, in which the accounts of the owners of stock are kept, with intent to defraud, is felony (a).

*Inspection of Books.*—The books of the Bank of England cannot be inspected by persons who have no interest in them, or who seek an inspection for purposes of a private nature, unconnected with the objects for which the books are kept.

A fund-holder has a right to inspect and copy entries relating to the stock and its transfers in which he is interested; but he has only the right as to the particular entries relating to the particular parcel of stock, and no other (b); and the bank is accordingly liable to furnish a list of such of their books as contain entries of stock in which the party applying is interested, and the Courts of Equity enforce this obligation (c).

The bank books are, in general, not removable, on the ground of public inconvenience (d), and they are proveable, by examined copies made under the provisions of the Act of 1879 (e).

The bank books are the best evidence of the transfer of stock, but still it is not always necessary that they should

(z) *Langton v. Waite*, 37 L. J., Chanc. 345; 4 L. R., Ch. 402.

(a) 24 & 25 Vict. c. 98, s. 5.

(b) *Foster v. Bank of England*, 8 Q. B. 689.

(c) *Heston v. Bank of England*, 6 Sim. 192.

(d) *Mortimer v. M'Cullan*, 6 M. & W. 58, 67, 69; *Rex v. Gordon*, Dougl. 572, n.; *Davis v. Bank of England*, 2 Bing. 401.

(e) See Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), printed in Appendix. The effect of sect. 3 of the Act is to make copies of entries in the books of a banker evidence against any one. *Harding v. Williams*, 14 Ch. D. 197.

be produced to afford this proof; the signature of the alleged transferee may be proved by a person who knew the party's handwriting, and had inspected the signature of acceptance in the books (*f*).

*Trusts.*—The Bank of England does not take notice of trusts; they are not to look beyond the legal title; therefore they cannot prevent an executor selling out or transferring stock into his own name (*g*), and are not chargeable, if he transfers the stock to persons not entitled under the will (*h*). There is a case decided in relation to this point a good many years ago, in which the facts were these:—

A transfer was made of stock at the bank in the name of a wife by her husband, which stock, it was suspected, she held by virtue of a trust to her separate use. A memorandum was made by the bank on the transfer, indicating that a flaw was suspected in the title. This, it was held, must not be allowed; it was further held, that no secret trust, as against the party having an open legal title, will affect the bank.

Lord Mansfield added, “I won't say a word against the holder of the stock having his action against the bank, for disparaging his title” (*i*).

The fact is, if the bank looked beyond the legal title, for instance if they took notice of the trusts of a will, they must be held to take notice throughout, and therefore they would have to stand the consequences of resulting trusts, and such trusts as would be raised by a Court of Equity (*k*); in fact, if so, they would be charged with all the trusts in the kingdom (*l*).

In reality, there is nothing in the statutes relating to the

(*f*) *Mortimer v. M'Callan*, 6 M. & W. 58.

(*g*) *Bank of England v. Parsons*, 5 Ves. 665.

(*h*) *Hartga v. Bank of England*, 3 Ves. 55.

(*i*) *Lady Mayo's case*, Loft, 65.

(*k*) *Bank of England v. Parsons*, 5 Ves. 669.

(*l*) 3 Ves. 58.

establishment or regulation of the bank, which makes them trustees of the public funds for any person; if they voluntarily enter in their books a trustee's account, they may, under certain circumstances, become liable for the performance of the trusts; they stand much in the same relation to stock, that a depositary of goods does to the goods; if they have distinct notice that the person in whose name the stocks stand is not the real owner, or holds subject to a claim, and they, nevertheless, allow the transfer to be made, there they may be, but then only, responsible for the transfer (*m*).

It is common, in order to avoid the frequent recurrence of the necessity of appointing fresh trustees—at least it is not uncommon when the stock is considerable—to appoint, in the first instance, four trustees; for then, on the decease of one, or even of a second, of the trustees, there still remains the check which one mind may be supposed to have over a tendency to dishonesty in the other.

In general, it is a rule with the Bank of England, not to allow a fund to be transferred into the names of *more* than four joint owners.

*Distringas upon*.—A claimant to an interest in stock transferable at the Bank of England, standing in the name or names of any person or persons, or body politic or corporate, in the bank books, who was desirous of restraining the transfer of such stock, or the payment of the dividends thereof, formerly issued a *distringas*, prepared by his solicitor, and sealed by the clerk of records and writs, in the form prescribed by the 5 Vict. c. 5, s. 5 (*n*). The writ was then served on the Bank of England, together with a notice not to permit the transfer, or not to pay the dividends, as the case might be.

(*m*) *Humberstone v. Chase*, 2 Y. & C. 209.

(*n*) Form of Affidavit, Order XXVII., Gen. Orders, H. T. 1860; 29 L. J., Chanc. 26. See *In re Marquis of Hertford*, 1 Hare, 584; *Watts v. Watts*, 40 L. J., Chanc. 388.

Now, however, by the Rules of the Supreme Court, 1880, it is provided that no distringas shall thenceforth be issued under the above act, and in place thereof it is enacted (o) :—

By Rule 23, that any person claiming to be interested in any stock standing in the books of a company may, on making an affidavit in or to the effect of the form B. 28 in the schedule thereto, and on filing the same in the central office with a notice in or to the effect of the form B. 23 in the same schedule annexed thereto, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the central office, serve the office copy and duplicate notice on the company.

Filing and service of affidavit and notice as to stock.  
Ord. XLVI.  
r. 4.

By Rule 24, there shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated or at any such substituted address as thereafter mentioned, whether the person to whom the notice is sent is living or not.

Affidavit to state address of claimant.  
Ord. XLVI.  
r. 5.

By Rule 25, the address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but all notices sent by post before the alteration to the address originally given or for the time being substituted therefor shall not be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this order.

Alteration of address.  
Ord. XLVI.  
r. 6.

By Rule 26, the service of the office copy of the affidavit and of the duplicate of the filed notice shall for the period of five years from the day of service, but not longer (unless the notice is renewed as thereafter mentioned), have the same force and effect as if these rules had not been made and a writ of distringas in respect of the stock had been duly issued under the act 5 Vict. c. 5, s. 5.

Service of affidavit and filed notice to have same effect as writ of distringas.  
Ord. XLVI.  
r. 7.

By Rule 27, the original notice may be kept on foot from time to time by a notice of renewal signed by the person by whom or on whose behalf the original notice was given, and served on the company, provided the notice of renewal, if only one is given, is served before the expiration of five years from the day on which the original notice was served, or, if more than one is given, then

Renewal of notice.  
Ord. XLVI.  
r. 8.

(o) Ord. XLVI. In these rules the expression "Company" includes the Governor and Company of the Bank of England and any other public company, whether incorporated or not, to which 5 Vict. c. 5, s. 5, applies; and the expression "stock" includes shares, securities, and money.

before the expiration of five years from the day on which the last previous notice of renewal was served. Each such notice of renewal shall have the effect of continuing and keeping on foot the original notice for the period of five years from the day on which the first notice of renewal or the last previous notice of renewal (as the case may be) was served.

Withdrawal  
or discharge  
of notice.  
Ord. XLVI.  
r. 9.

By Rule 28, a notice filed under this order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice or by petition duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

Effect of  
request for  
transfer of  
stock or  
payment of  
dividend.  
Ord. XLVI.  
r. 10.

By Rule 29, if, whilst a notice filed under this order continues in force, the company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the dividends thereon, the company shall not by force or in consequence of the service or of any renewal of the notice, be authorized, without the order of the court, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request.

Amendment  
of description  
of stock.  
Ord. XLVI  
r. 11.

By Rule 30, if the person who files a notice under this order desires to correct the description of the stock referred to in the filed notice he may file an amended notice and serve on the company a duplicate thereof sealed with the seal of the central office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

*Dividends.*—By the National Debt Act, 1870, s. 25, the Banks of England and Ireland may close their books for the transfer of stock on any day in the month next preceding that in which the dividends on that stock are payable, but so that the books be not at any time so closed for more than fifteen days. The persons who on the day of such closing are inscribed as stockholders shall, as between them and their transferees of stock, be entitled to the then current half-year's dividend thereon.

By sect. 17, the Bank of England and Ireland before allowing the receipt of any dividend on any stock may, if the circumstance of the case appear to them to make it

expedient, require evidence of the title of any person claiming a right to receive the dividend. That evidence shall be the declaration of competent persons under the Statutory Declarations Act, 1835 (*n*), or of such other nature as the banks require.

By sect. 19, the banks are also authorized to pay the dividends under the power of attorney of one joint owner, where the other is either an infant or a person of unsound mind.

*Action to recover.*—In an action, however, against the bank for the nonpayment of dividends, the plaintiff must allege and prove that the money to discharge the dividends has been received by the bank from the government, for the bank has no more than the care of the stock; and it must be shown that they have funds, before they can be proved to have committed a breach of duty in not paying them over to the plaintiff (*o*).

*Forging Powers of Attorney to receive.*—Forging a power of attorney for the receipt of any dividend is a felony (*p*).

*Transmission of Warrants by Post.*—By the National Debt Act, 1870 (*q*), s. 20, the Banks of England and Ireland may, from time to time, with the sanction of the Treasury, make arrangements for the payment of dividends on stock by sending the warrants through the post, and every warrant so sent by post shall be deemed a cheque on the Bank of England or of Ireland (*r*). By sect. 21, where a stockholder desires to have his dividend warrants sent to him by post, he must make a request for that purpose to the Bank of England or of Ireland, in writing signed by him,

(*n*) 5 & 6 Will. 4, c. 62, ss. 2—5.

(*o*) *Bank of England v. Davis*, 5 B. & C. 185.

(*p*) 24 & 25 Vict. c. 98, s. 4.

(*q*) 33 & 34 Vict. c. 71.

(*r*) So by 36 & 37 Vict. c. 44, where government annuities for life or years are payable by the Commissioners for the Reduction of the National Debt, the warrants may be sent by post at the request of the annuitants.

in a form approved by the bank and the Treasury, and must give to the bank an address which must be in the United Kingdom, or the Channel Islands or the Isle of Man, to which the letters containing the warrants are from time to time to be sent. The posting by the bank of a letter containing the dividend warrant, addressed to the stockholder at his request, will be equivalent as respects the liability of the bank to the delivery of the warrant to the stockholder himself.

*Making out False Dividend Warrants.*—It is felony for any clerk, officer or servant of the Bank of England or of Ireland, to make out or deliver any dividend warrant for a greater or less amount than the person on whose behalf the warrant is made out is entitled to, with intent to defraud (*r*).

Unclaimed  
dividends.

*Unclaimed Dividends.*—By the National Debt Act, 1870 (*s*), s. 51, all stock, no dividend whereon is claimed for ten years before the last day on which a dividend thereon becomes payable (except where payment of dividend has been restrained by a Court of Equity), shall be transferred in the books of the Bank of England or of Ireland (as the case may be) to the National Debt Commissioners. By sect. 55, the governor, or deputy governor of the Bank of England or Ireland, may direct the accountant-general or deputy accountant-general or secretary or deputy or assistant secretary of the bank to re-transfer any stock transferred to any person showing his right thereto to the satisfaction of the governor or deputy governor, and to pay the dividends due thereon, as if the same had not been transferred or paid to the National Debt Commissioners. But in case the governor or deputy governor is not satisfied of the right of any person claiming

(*r*) 24 & 25 Vict. c. 98, s. 6.

(*s*) 33 & 34 Vict. c. 71. This act repeals the 56 Geo. 3, c. 60, the former statute on this subject.

to be entitled to any such stock or dividends, the claimant may, by petition in a summary way, state and verify his claim to the Court of Chancery.

Under this statute it is not necessary for the claimant to show himself to be beneficially interested in the stock; to prove a legal claim to it is sufficient (*t*). But then it is not a matter of course, where there is anything to indicate the party not to be beneficially entitled, to order a re-transfer upon the claimant making out a legal title, such as a transfer would have been made to him upon, if the ten years had not elapsed; thus, if stock stands in the names of two persons, one of whom survives the other upwards of ten years, but has not, during that time, claimed any dividends, the Court refuses, upon petition of the survivor's widow and personal representative, to order the stock to be re-transferred into her name, or into the names of the two deceased persons, but directs a reference to inquire who is entitled to the stock, with liberty to state special circumstances (*u*).

On a re-transfer of stock, the unpaid dividends are simply payable without any accumulations arising from re-investment of dividends (*x*).

*Bank Stock*.—Before the 22 & 23 Vict. c. 35, s. 32, an investment by trustees of trust moneys in Bank of England stock, though it was practically as safe as the government funds, was not regarded by the Courts of Equity as a proper investment of trust moneys, and, upon knowledge of the fact that such an investment had been made, they would have ordered the stock to be sold out, and the proceeds invested in consols. If any loss was occasioned to the trust estate by fluctuation in the prices of the bank stock, or of the government stock, between the dates when

(*t*) *In re Bigg*, 1 Y. & C. 245.

(*u*) *Ex parte Ram*, 3 M. & C. 25; *In re Bishton*, 27 L. J., Chanc. 168; *Hunt v. Peacock*, 6 Hare, 361.

(*x*) *In re Ashmead*, L. R., 8 Ch. 113; 42 L. J., Chanc. 314. See also on this subject *In re Auckland*, 26 L. T. 418.

the investment was made, and the re-investing in consols, the trustee had to make good the difference (*y*). But now a trustee, or an executor, or an administrator, unless he is expressly forbidden by the instrument creating his trust, may invest any trust fund in the stock of the Bank of England or of Ireland, and the trustee so doing will not be liable on that account as for a breach of trust, if the investment is in other respects reasonable and proper (*z*). Upon a loss sustained by a depreciation in the price of consols, a trustee upon a proper investment will not be liable for the difference (*a*).

#### Bonuses.

*Bonuses*.—An extraordinary division of a sum of money among the proprietors of bank stock, beyond the ordinary dividend, by way of bonus, is considered as an accretion to the capital; therefore, a tenant for life of the bank stock, in respect of which the division is made, is not entitled to the bonus, but only to the dividends upon it considered as capital, as they accrued during his life (*b*); it makes no difference that the division was in money, and not in stock; that did not cause it to be considered as a profit arising and payable in the time of the tenant for life, and to which, therefore, he was entitled, inasmuch as all the profits, ordinary and extraordinary, arose in the same way (*b*).

Stock stood in the names of trustees under a marriage settlement, to pay the dividends with any bonuses that might from time to time be allowed, and when the same should be payable, to a husband and his wife and the survivor for life: it was held, that the husband was absolutely entitled to a bonus declared during his life estate (*c*). He did not take the bonus, but allowed it to be added to

(*y*) *Hancox v. Allen*, 2 Dick. 498; *Clough v. Bond*, 3 M. & C. 496.

(*z*) 22 & 23 Vict. c. 35, s. 32, and 23 & 24 Vict. c. 38, s. 12.

(*a*) *Peat v. Crane*, 2 Dick. 499, n.

(*b*) *Brander v. Brander*, 4 Ves. 802; 14 Ves. 70, 78; 13 Price, 771; *Paris v. Paris*, 10 Ves. 185; *Clayton v. Gresham*, 10 Ves. 290; *Witt v. Stern*, 13 Ves. 363. See *Re Hopkins' Trust*, 22 W. R. 687.

(*c*) *In re Mitton*, 4 Jur., N. S. 1077.

the capital and received the dividends on the whole. On his death, the wife as survivor was entitled to receive the bonus (*d*).

*Bequests.*—When a person is possessed of money in consols and other government securities, and also of bank stock, and bequeaths “all his fortune standing in the funds,” the bank stock does not pass. The reason is, that the words “the funds” have received an interpretation to mean “the public funds,” as appears from the Stamp Acts, which have always made a distinction between bank stock and the government funds (*e*).

On the other hand, when a person not having either at the date of his will or at the time of his death any bank stock, but having some Three and a quarter per Cent. Annuities, there being no other stock standing in his name, bequeaths “all my bank stock,” the annuities will pass (*f*).

*Stamps on Conveyance or Transfer of Bank Stock.*—By the Stamp Act, 1870, Schedule, the conveyance or transfer, whether on sale or otherwise of any stock of the Bank of England is chargeable with the duty of 7*s.* 9*d.*

*Stamps on Bills and Notes.*—The promissory notes, bills of exchange and bank post bills of the bank are exempt from stamp duty (*g*), and are re-issuable after payment as often as the bank thinks fit. But the practice of the bank is never to re-issue a note or a bill which it has once paid.

(*d*) *In re Mittam*, 4 Jur., N. S. 1077.

(*e*) *Grainger v. Slingsby*, 25 L. J., Chanc. 573; 8 De G., Mac. & G. 385; S. C. 7 H. L. Cas. 273.

(*f*) *Drake v. Martin*, 26 L. J., Chanc. 786.

(*g*) 55 Geo. 3, c. 184, s. 20; 7 & 8 Vict. c. 32, s. 7.

## CHAPTER XXXV.

## BANK OF IRELAND AND BANK OF SCOTLAND.

THE Bank of Ireland was established by a royal charter in pursuance of an act of the Irish parliament (*a*), and possesses similar privileges to the bank of England, and is governed by similar principles. The restriction in that act against the bank lending or advancing money to be secured by mortgage or sale of lands, tenements, or hereditaments, redeemable, has been repealed by 23 & 24 Vict. c. 31.

The 35 Vict. c. 5 alters the charter as to the number and election of the directors.

The 8 & 9 Vict. c. 37 continues the bank's privileges until determined by notice in the Dublin Gazette, and regulates the issue of bank notes or bills payable on demand. The notes, bank post bills and bank bills of exchange of the bank may be signed by machinery (*b*).

The Bank of Scotland, by the name of the governor and company of the Bank of Scotland, was established by an act of the Scotch parliament in 1695. The 14 Geo. III. c. 32, recognizes its establishment and continues the act in force. The commissioners of the treasury may compound with the Bank of Scotland, the Royal Bank of Scotland, the British Linen Company, and other Scotch banks, for the stamp duty payable on their notes and bills of exchange (*c*). The 8 & 9 Vict. c. 38, regulates the issue of bank notes in Scotland.

(*a*) 21 & 22 Geo. 3, c. 16 (Irish).

(*b*) 27 & 28 Vict. c. 78.

(*c*) 16 & 17 Vict. c. 63, s. 7. By 36 & 37 Vict. c. ccvii, s. 2, the Royal Bank of Scotland may establish a branch in London, but this power shall not authorize it to issue its own bank notes elsewhere than in Scotland.

## CHAPTER XXXVI.

CRIMINAL LIABILITY OF OFFICERS AND SERVANTS OF THE  
BANK OF ENGLAND AND OF THE BANK OF IRELAND.

AN officer or servant of the Bank of England, or of Ireland, intrusted with any bond, deed, note, bill, dividend warrant, or warrant for the payment of any annuity or interest, or money, or with any security, money, or other effects of or belonging to the Bank of England or of Ireland, or having any bond, deed, note, bill, dividend warrant, or warrant for the payment of any annuity or interest, or money, or any security or other effects of any other person, body politic or corporate, lodged or deposited with the Bank of England or of Ireland, or with him as an officer or servant of the Bank of England or of Ireland, secreting, embezzling or running away with any such bond, deed, note, bill, dividend or other warrant, security, money or other effects, or any part thereof, will be guilty of felony (*a*), and on conviction will be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement (*b*).

(*a*) 24 & 25 Vict. c. 96, s. 73.

(*b*) 27 & 28 Vict. c. 47, s. 4.

## CHAPTER XXXVII.

## BANKS OF ISSUE.

*Bank of England.*—The Bank of England is a bank of issue, and its powers, in this respect, are defined by the 7 & 8 Vict. c. 32, commonly called the Bank Charter Act of 1844 (*a*). By that act the banking and issue departments were separated, and the bank was authorized to issue from the issue department into the banking department notes payable on demand, to the amount of 14,000,000*l.*, upon the credit of securities of equivalent value first being lodged in the issue department. The amount of these securities or the notes may be diminished from time to time, but cannot be increased (*b*) or exceeded (*c*), “save in exchange for other Bank of England notes, or for gold coin, or for gold (*d*) or silver bullion (*e*), purchased or received for the issue department or in ex-

(*a*) The act is printed in the Appendix of Statutes.

(*b*) Sect. 5, however, provides for a limited increase of securities and notes. If a country banker shall cease to issue his own notes, an order in council may empower the bank to increase the securities, and issue additional notes, but such increase is not to exceed two-thirds of the authorized issue of such banker. In the preamble of the 21 Vict. c. 1, indemnifying the bank, on the occasion of an over-issue, in 1857, the amount of the securities acquired and taken in the issue department is there stated to be limited to 14,750,000*l.* under the provisions of the act and an order in council. The bank, by sect. 9 of the 7 & 8 Vict. c. 32, is to allow the public the profits of its increased circulation, which profits, by the 24 Vict. c. 3, s. 4, are payable between the 6th of April and the 5th of July yearly, to the account of the comptroller of the Exchequer.

(*c*) In 1857, the bank having issued notes in excess of its authorized circulation by direction of the government in order to meet an extraordinary demand for discount and to avoid pressure on the reserves of the bank, the 21 Vict. c. 1, was passed to indemnify the bank, and confirm the issue.

(*d*) By sect. 4, Bank of England notes may be demanded at the issue department in exchange for gold bullion at the rate of £3: 17*s.* 9*d.* per ounce of standard gold, but it must be melted and assayed at the expense of the parties.

(*e*) Sect. 3 limits the amount of silver bullion to be retained at a time by the bank in the issue department to one-fourth of the gold coin and the bullion in that department.

change for securities acquired and taken in that department."

An account of the notes in circulation and of the securities in the issue department, as well of the capital stock, deposits, money and securities in the banking department, is to be transmitted weekly to the commissioners of stamps and taxes (*f*), and published in the Gazette.

The notes of the bank payable to bearer on demand are exempt from stamp duty (*g*), and may be signed by machinery instead of being written by cashiers of the bank (*h*).

*Other Banks of Issue.*—No bank other than the Bank of England and those banks lawfully issuing such instruments on the 6th of May, 1844, can issue bills or notes payable on demand (*i*).

(1.) By the 39 & 40 Geo. III. c. 28, s. 15, it was forbidden to establish any corporate bank whatever, or any bank where the number of bankers in partnership should exceed six, so as "to borrow, owe, or take up any sum or sums of money, on their bills or notes, payable on demand, or at any less time than six months from the borrowing thereof," during the continuance of the privileges secured to the Bank of England, by former acts of parliament.

(2.) In 1826, the 7 Geo. IV. c. 46 was passed, legalizing the formation under deeds of settlement of banking copartnerships consisting of more than six persons, provided they did not carry on business within the distance of sixty-five miles from London, and had not any of their banking establishments in London. Every member was also responsible for the payment of all bills and notes issued, and for all sums of money borrowed, owed or taken up, by the copartnership. These restrictions and conditions were imposed by the first section of the act (*j*).

(*f*) By the 12 & 13 Vict. c. 1, the commissioners are now called the commissioners of inland revenue.

(*g*) 7 & 8 Vict. c. 32, s. 7.

(*h*) 1 Geo. 4, c. 92, s. 3, and 16 & 17 Vict. c. 2, s. 1.

(*i*) 7 & 8 Vict. c. 32, see post.

(*j*) The acceptance by one of these copartnerships of a customer's bill, at less than six months' date, on account of a balance in favour of the customer, was a *borrowing* in point of law, within the meaning of this statute. The drawing of a bill, at a longer period than six months, though the acceptance was within six months of its maturity, was a violation of the

(3.) By 9 Geo. IV. c. 23, s. 1, it was enacted, that it should be lawful for *any person or persons carrying on the business of a banker or bankers* in England (except within the city of London or within three miles thereof), having first duly obtained a licence for that purpose, and given security by bond, to issue, on unstamped paper, promissory notes for any sum of money amounting to five pounds or upwards, expressed to be payable to the bearer on demand, or to order, at any period not exceeding seven days after sight; and also to draw and issue, on unstamped paper, bills of exchange, expressed to be payable to order, on demand, or at any period not exceeding seven days after sight, or twenty-one days after the date thereof: *provided* such bills of exchange be drawn upon a person or persons carrying on the business of a banker or bankers in London, Westminster or the borough of Southwark; or *provided* such bills of exchange be drawn by any banker or bankers at a town or place where he or they shall be duly licensed to issue unstamped notes and bills, under the authority of this act, upon himself or themselves, or his or their copartner or copartners, payable at any other town or place where such banker or bankers shall also be duly licensed to issue such notes and bills as aforesaid.

(4.) But by 3 & 4 Will. IV. c. 98, s. 2, it was enacted, that banks consisting of more than *six* persons should not have the power to issue notes payable on demand in London or within sixty-five miles thereof; but were permitted, by section 3, to carry on the business of banking within the above limits, provided they did not issue bills or notes at less than six months' date (*j*).

(5.) By sect. 10 of 7 & 8 Vict. c. 32, as above stated, it is enacted that no person, other than a banker, who, on the 6th of May, 1844, was lawfully issuing his own bank notes, shall make or issue bank notes in any part of the United Kingdom.

And by sect. 11, after the 19th of July, 1844, it shall not be lawful for any banker to draw, accept, make or issue, in England or Wales,

provisions of the statute, and no person, who was privy to it, could enforce the acceptance (*Booth v. Bank of England*, 6 Bing. N. C. 415). So, where a London joint stock bank, consisting of more than six persons, agreed with a Canadian bank that the manager of the London bank should accept bills drawn by the Canadian bank, payable at a date earlier than six months, and the London bank should provide funds for meeting them, the House of Lords held that the acceptance of such bills was unlawful, and an infringement of the privileges of the Bank of England (*Ferring v. Dunston*, R. & M. 426).

(*j*) Under this section, it was held that a partnership consisting of more than six persons, and within sixty-five miles of London, could not accept a bill of less than six months' date drawn by a customer upon them (*Bank of England v. Anderson*, 9 Bing. N. C. 589).

any bill of exchange or promissory note, or engagement for the payment of money, payable to bearer on demand, or to borrow, owe or take up, in England or Wales, any sums or sum of money on the bills or notes of such banker payable to bearer on demand, save and except that it shall be lawful for any banker, who was on the 6th of May, 1844, carrying on the business of a banker in England or Wales, and was then lawfully issuing, in England or Wales, his own bank notes under the authority of a licence to that effect, to continue to issue such notes to the extent and under the conditions hereinafter mentioned, but not further or otherwise; and the right of any company or partnership to continue to issue such notes shall not be in any manner prejudiced or affected by any change which may hereafter take place in the personal composition of such company or partnership, either by the transfer of any shares or share therein, or by the admission of any new partner or member thereto, or by the retirement of any present partner or member therefrom: provided always, that it shall not be lawful for any company or partnership, now consisting of only six or less than six persons to issue bank notes at any time after the number of partners therein shall exceed six in the whole. On the death of any of the members of a firm, the privilege of issuing notes continues to the surviving members (*k*). And by sect. 26, any society or company or any persons in partnership, though exceeding six in number, and carrying on business in London, or within sixty-five miles thereof, may draw, accept or indorse bills of exchange, *not being payable to bearer on demand*. The 3 & 4 Will. 4, c. 98, s. 3, is therefore repealed in respect of this restriction (*l*).

A banker, who becomes bankrupt, or ceases to carry on his business, or discontinues to issue his own notes, is prohibited from recommencing or resuming the issue (*m*).

*Weekly Returns.*—By 4 & 5 Vict. c. 50, s. 1, all bankers in England, Scotland and Ireland, with the exception of the Bank of England, issuing notes payable on demand are to keep accounts of the amount of notes in circulation at the close of each week, and to make verified returns thereof every four weeks, under a penalty of 50*l*. By sect. 3, from these accounts and the accounts which the Bank of England is bound to render, the amount of these

(*k*) *Smith v. Everett*, 27 Beav. 446; 29 L. J., Chanc. 236.

(*l*) A summary of the above acts will be found in the Chapter on *Joint-Stock Banks*.

(*m*) 7 & 8 Vict. c. 32, s. 12.

notes in circulation in the United Kingdom every four weeks is ascertained.

Monthly  
averages.

*Monthly Averages.*—Any excess, above the limited monthly average circulation, is prohibited by 7 & 8 Vict. c. 32, s. 17, under the forfeiture of a sum equal to the amount in excess of the authorized circulation.

By sect. 18, banks of issue are to render in a given form weekly accounts to the Inland Revenue of the amount of their notes in circulation under a penalty of 50*l.*; and by sect. 19, a mode of ascertaining the average amount of bank notes in circulation is prescribed; and by sect. 15, the London Gazette is made conclusive evidence in all Courts of the amount of bank notes which the banker named in the certificate of the commissioners is by law authorized to issue and to have in circulation.

The commissioners (by sect. 20) are empowered (with the consent of the Lords of the Treasury), to examine, copy or make extracts from the books of all banks of issue, containing accounts of the notes in circulation, to ensure the rendering true accounts.

*Return of Names to the Stamp Office.*—By sect. 21, every banker in England and Wales is bound under a penalty of 50*l.* on the 1st of January in each year, or within fifteen days afterwards, to make a return to the Inland Revenue Office of his name, residence and occupation; and in the case of a company or partnership, of the name, residence and occupation of every member of the company or partnership, and also the name of the firm under which the banker or company carries on business, together with the names of the places of their business.

The 8 & 9 Vict. c. 76, s. 5, prescribes the mode of recovering and applying the penalties.

*Uniting of Banks of Issue.*—A provision is made by the 7 & 8 Vict. c. 32, s. 16, for the purpose of facilitating the

union or amalgamation of banking establishments, as far as regards the circulation of their notes.

*By Copartnerships under 7 Geo. IV. c. 46.*—Banking copartnerships established under this statute are entitled to issue and re-issue notes, without being stamped, upon security being given by sect. 16; but the enactment must be read in conjunction with the provisions of the 7 & 8 Vict. c. 32, s. 12, as to becoming bankrupt, and rendering accounts of their issue and circulation.

On issuing bills or notes before making the returns, they forfeit 500*l.* for each week of their neglect, by sect. 18.

*Irish and Scotch Banks.*—The issue of bank notes in Ireland (*n*) and in Scotland (*o*) is governed by similar provisions and restrictions as the English banks are by the Bank Charter Act of 1844.

*Bankers' Licences.*—Bankers and joint-stock banks in England, Ireland and Scotland, authorized to issue bank notes, must take out annual licences, on which a duty of 30*l.* is payable respectively. The 55 Geo. III. c. 184, Sched. tit. LICENCE (*p*), unrepealed by 33 & 34 Vict. c. 99, and the 24 & 25 Vict. c. 91, s. 35, regulate the grant of these licences in England and Scotland, and the 9 Geo. IV. c. 80, and 5 & 6 Vict. c. 82, s. 31, also unrepealed by 33 & 34 Vict. c. 99, as to Ireland.

The 9 Geo. IV. c. 23, enabled bankers in England, except within the city of London or within three miles, as already stated (*q*), to issue their promissory notes and to draw bills of exchange not exceeding seven days after

(*n*) 8 & 9 Vict. c. 37. This act is in the Appendix of Statutes.

(*o*) 8 & 9 Vict. c. 38, which is inserted in the Appendix of Statutes.

(*p*) The terms in which the duty is imposed are as follows:—"Licence to be taken out yearly by any banker or bankers, or other person or persons, who shall issue any promissory notes for money payable to the bearer on demand, and allowed to be re-issued, 30*l.*"

(*q*) See ante, p. 330.

sight, or twenty-one days after date, on the condition of obtaining a licence. Thus, by sect. 2:—

It shall be lawful for any two or more of the commissioners of stamps to grant to all persons carrying on the business of bankers in England (except as aforesaid), who shall require the same, licences authorizing such persons to issue such promissory notes, and to draw and issue such bills of exchange as aforesaid, on unstamped paper; which licences shall be and are hereby respectively charged with a stamp duty of thirty pounds for every such licence.

By sect. 3, a separate licence shall be taken out in respect of every town or place where any such unstamped promissory notes or bills of exchange as aforesaid shall be issued or drawn: provided always, that no person or persons shall be obliged to take out more than four licences in all for any number of towns or places in England; and in case any person or persons shall issue or draw such unstamped notes or bills as aforesaid, at more than four different towns or places, then, after taking out three distinct licences for three of such towns or places, such person or persons shall be entitled to have all the rest of such towns or places included in a fourth licence.

By 7 & 8 Vict. c. 32, s. 22, every banker who shall be liable by law to take out a licence from the commissioners of stamps and taxes, to authorize the issuing of notes or bills, shall take out a separate and distinct licence for every town or place at which he shall, by himself or his agent, issue any notes or bills requiring such licence to authorize the issuing thereof, anything in any former act contained to the contrary thereof notwithstanding: provided always, that no banker, who, on or before the 6th of May, 1844, had taken out four such licences which on the said last-mentioned day were respectively in force, for the issuing of any such notes or bills, at more than four separate towns or places, shall at any time hereafter be required to take out or to have in force at one and the same time more than four such licences, to authorize the issuing of such notes or bills at all or any of the same towns or places specified in such licences in force on the 6th of May, 1844, and at which towns or places respectively such bankers had on or before the said last-mentioned day issued such notes or bills in pursuance of such licences or any of them respectively.

By 9 Geo. IV. c. 23, s. 4, every licence granted under the authority of that act shall specify all the particulars required by law to be specified in licences to be taken out by persons issuing promissory notes, payable to bearer on demand, and allowed to be re-issued; and every such licence which shall be granted between the 10th of October and the 11th of November in any year shall be dated on the 11th of

October, and every such licence which shall be granted at any other time shall be dated on the day on which the same shall be granted; and every such licence shall (notwithstanding any alteration which may take place in any copartnership of persons to whom the same shall be granted) have effect and continue in force from the day of the date thereof, until the 10th of October then next following, both inclusive, and no longer.

*Joint Stock Banks' Licences.*—The 24 & 25 Vict. c. 91, s. 35, enacts, that, where a company or copartnership consists of more than six persons, it shall be sufficient to specify in the licence or certificate the names and places of abode of any six or more of such persons who may be presented to the commissioners, and to grant the licence or certificate to them as and for the whole of the company or copartnership, or otherwise to specify only the name or style of the company or copartnership, and to grant the licence or certificate to such company, in and by the said name or style, as the commissioners may think fit; and such licence and certificate are to be as good and available as if the names and places of abode of all the members of the company had been specified therein, and the licence had been granted to them.

*Stamp Duties on Bank Notes.*—The Stamp Act, 1870, imposes or rather re-enacts the duty payable on bank notes, which are issuable and re-issuable by licensed bankers (*r*).

(*r*) In the Schedule, which by sect. 6 (1) is made a part of the act, as follows:—

	£	s.	d.
For money not exceeding 1 <i>l</i> . . . . .	0	0	5
Exceeding 1 <i>l</i> . and not exceeding 2 <i>l</i> . . . . .	0	0	10
"    2 <i>l</i> .                   "    5 <i>l</i> . . . . .	0	1	3
"    5 <i>l</i> .                   "    10 <i>l</i> . . . . .	0	1	9
"    10 <i>l</i> .                  "    20 <i>l</i> . . . . .	0	2	0
"    20 <i>l</i> .                  "    30 <i>l</i> . . . . .	0	3	0
"    30 <i>l</i> .                  "    50 <i>l</i> . . . . .	0	5	0
"    50 <i>l</i> .                  "    100 <i>l</i> . . . . .	0	8	6

By sect. 45, the term "banker" means and includes any corporation, society, partnership and persons, and every individual person carrying on the business of banking in the United Kingdom.

The term "bank note" means and includes—

(1.) Any bill of exchange or promissory note issued by any banker,

*Stamped Bank Notes.*—Licensed bankers are prohibited, by 9 Geo. IV. c. 23, s. 6, from issuing their promissory notes for payment of money to the bearer on demand on stamped paper.

*Security on Issue of Unstamped Bank Notes.*—Bankers licensed to issue their unstamped paper are required, by 9 Geo. IV. c. 23, s. 7, to give security by bond to the crown, and by sects. 10 and 11 provisions are made to meet changes in partnership in banks, and requiring fresh securities in such cases, and enforcing the renewal of the bonds.

*Composition in lieu of Stamp Duties.*—By 9 Geo. IV. c. 23, s. 7, and 17 & 18 Vict. c. 13, s. 12, country and other bankers in England, authorized to issue promissory notes and bills of exchange, may compound for the stamp duties payable on their notes and bills; and thereupon they may issue and re-issue their notes on unstamped paper (*s*). The 5 & 6 Vict. c. 82, s. 2, extends this privilege to bankers in Ireland in respect of their notes (*s*). The Commis-

other than the Governor and Company of the Bank of England, for the payment of money, not exceeding 100*l.*, to the bearer on demand:

- (2.) Any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding 100*l.* on demand, whether the same be so expressed or not, and in whatever form, and by whomsoever such bill or note is drawn or made.

By sect. 46, a bank note issued duly stamped, or issued unstamped by a banker duly licensed or otherwise authorized to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of such re-issuing.

By sect. 47 (1). If any banker, not being duly licensed or otherwise authorized to issue unstamped bank notes, issues, or causes or permits to be issued, any bank note not being duly stamped, he shall forfeit 50*l.*

By sect. 47 (2). If any person receives or takes any such bank note in payment or as a security, knowing the same to have been issued unstamped contrary to law, he shall forfeit 20*l.*

(*s*) The composition is as follows:—

For every 100 <i>l.</i> , and also for the fractional part of 100 <i>l.</i> , of the average amount, a value of such notes or bills in circulation during every half-year .....	s. d. 3 6
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sioners of the Treasury may compound with bankers in Scotland or elsewhere for the stamp duties on promissory notes, payable to bearer on demand, and on their bills of exchange. On the composition being entered into, the bankers are entitled to issue and re-issue their notes and draw bills on unstamped paper (*t*). The 27 & 28 Vict. c. 86, extended this provision to bankers in Ireland in respect of the duties payable on bank post bills of 5*l.* or upwards. The act was originally limited in its operation to bank post bills issued during three years from the 29th of July, 1864, but the 30 & 31 Vict. c. 89, has made the enactment perpetual.

*Composition with Bank of England on relinquishing Issue.*

—The power of the Bank of England to enter into compositions with bankers, on discontinuing the issue of their own notes, was limited to the 1st of August, 1856 (*u*), but a subsequent statute has extended the period, until parliament shall prohibit the issue of bank notes, or until the privileges of the bank shall be determined (*x*). Banking copartnerships, surrendering their right to issue their own notes, by agreement with the Bank of England, do not lose the privilege of suing and being sued in the name of their public officer (*y*).

*Form of Notes with printed Dates.*—With respect to the form of bankers' notes, the 55 Geo. III. c. 184, s. 18, prohibited, under a penalty of 50*l.*, a banker issuing any promissory note payable to bearer on demand, and liable to the stamp duties imposed by that act, *with the date printed therein*. But this enactment has been repealed by the 23 & 24 Vict. c. 111, s. 19, and there is no such restriction now existing.

(*t*) 16 & 17 Vict. c. 63, s. 7.

(*u*) 7 & 8 Vict. c. 32, ss. 23, 24.

(*x*) 19 & 20 Vict. c. 20.

(*y*) 27 & 28 Vict. c. 32.

Issue of bank  
notes under  
5*l*.

*Issue of Bank Notes under 5*l*.*—Bank notes payable to bearer on demand for 20*s*. or above that sum, and less than 5*l*. were prohibited to be issued or re-issued by the Bank of England or any banker in England after the 5th of April, 1829 (*z*). In Ireland (*a*) and Scotland (*b*) such notes are legal, if issued by bankers who were entitled to issue their own bank notes prior to the year 1845, and who have obtained the certificate of the commissioners of Inland Revenue, authorizing them to continue to do so. But these notes must not be for the payment of a fraction of a pound (*c*).

Foreign  
banks of  
issue.

*Foreign Banks of Issue.*—These banks are regulated in their issue by the laws of the countries in which they are established (*d*). The right to regulate the coinage and issue the paper money of a state is part of its sovereign prerogatives, recognized by the law of nations, and will be protected by our Courts, when infringed or invaded. Certain persons in this country had manufactured documents purporting to be the notes of a foreign state, the Court of Chancery, at the instance of the sovereign of the

(*z*) 7 Geo. 4, c. 6.

(*a*) 8 & 9 Vict. c. 37, ss. 8, 26.

(*b*) 8 & 9 Vict. c. 38, ss. 1, 18.

(*c*) 8 & 9 Vict. c. 38, s. 5; 8 & 9 Vict. c. 37, s. 15. Promissory notes or bills of exchange under 20*s*., which are negotiable or transferable, are made void and illegal by 48 Geo. 3, c. 88, s. 2; if payable, however, to a particular person, and not to order or to bearer, they would seem to be valid. Notes or bills for 20*s*. or above that sum or less than 5*l*., or on which 20*s*. or above that sum or less than 5*l*. remain undischarged, made, drawn or indorsed by other parties than licensed bankers, require to be in a certain form, to be payable twenty-one days after date, and to be attested under the provisions of the 17 Geo. 3, c. 30, made perpetual by 27 Geo. 3, c. 16, as to England; and by 8 & 9 Vict. c. 38, s. 17, as to Scotland; and by 8 & 9 Vict. c. 37, s. 25, as to Ireland. The 9 Geo. 4, c. 65, prohibited the circulation of these notes in England, when issued in Ireland or Scotland. But the 26 & 27 Vict. c. 105, s. 1, originally suspended these restrictions as to England and Scotland for three years from the 28th of July, 1863, and the 27 Vict. c. 20, as to Ireland, for two years from the 13th of May, 1864; and these acts have been since annually renewed by the Expiring Laws Continuance Acts, see 44 & 45 Vict. c. 70.

(*d*) *Emperor of Austria v. Kossuth*, 2 Giff. 628; *S. C.*, on appeal, 30 L. J., Chanc. 690.

state, alleging that the introduction of such notes into his dominions would cause great detriment to his subjects, directed the manufacturers to deliver up the notes to be destroyed, and the plates from which they had been manufactured, and restrained such persons from manufacturing such notes (*e*). But the Courts will not interfere with the mode in which the sovereign of a foreign state concedes or grants the right of issuing notes to others (*f*).

Therefore, where a bill was filed in the Court of Chancery against the Ottoman Bank, its directors, and the Sultan, alleging that the Sultan's government had granted to the plaintiffs the exclusive right of issuing bank notes in Turkey, and had subsequently in derogation of that grant made a similar concession to the Ottoman Bank, and prayed for a declaration of the plaintiffs' exclusive right, and an injunction against the Ottoman Bank and its directors: it was held, that, inasmuch as the Court had no jurisdiction on the contract or concession as against the Sultan, it had none against the bank and its directors (*f*).

*Colonial Banks of Issue.*—Banks of issue in India and in the Colonies are regulated by local laws (*g*), or by charters from the Crown.

*Limited Banking Companies.*—A banking company claiming to issue notes in the United Kingdom is not entitled to limited liability, but continues subject to unlimited liability in respect of such issue (*h*).

The negotiability and payment of bank notes will be considered in the next Chapter.

(*e*) Ibid.

(*f*) *Gladstone v. Ottoman Bank*, 1 H. & M. 505.

(*g*) In New South Wales, by 4 Vict. No. 13, and 5 Vict. No. 24; in Queensland, by 4 Vict. No. 13; and in Canada, by the Consolidated Statutes of Canada, c. 54, 55.

(*h*) The Companies Act, 1879 (42 & 43 Vict. c. 76), s. 6.

## CHAPTER XXXVIII.

## BANK NOTES.

Most questions respecting Bank of England and country bank notes may be considered together. The right to issue bank notes and their liability to stamp duty have been stated in the last Chapter.

Definition of  
bank notes.

*Definition of Bank Notes.*—What shall be deemed bank notes, within the meaning of the Bank Charter Act of 1844, and the acts regulating the issue of bank notes in Ireland and Scotland, as regards the enactments concerning stamps, has been subsequently defined by the 17 & 18 Vict. c. 83, s. 11, as follows:—

“All bills, drafts or notes, other than notes of the Bank of England, which shall be issued by any banker, or the agent of any banker, for the payment of money to the bearer on demand; and all bills, drafts or notes so issued which shall entitle or be intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of any sum of money on demand, whether the same shall be so expressed or not, in whatever form and by whomsoever such bills, drafts or notes shall be drawn or made, shall be deemed to be bank notes of the banker by whom or by whose agent the same shall be issued within the meaning of the 7 & 8 Vict. c. 32, and 8 & 9 Vict. cc. 38 and 37.”

And by sect. 12, all bills, drafts and notes which by or under those acts are declared or deemed to be bank notes, shall be liable to the duties and composition for stamp

duties, imposed or payable under any act or acts in force upon or in respect of promissory notes for the payment of money to the bearer on demand; and all clauses, provisions, regulations, penalties and forfeitures, contained in any act or acts relating to the issuing of such notes, or for securing the stamp duties and composition; or for preventing or punishing frauds or evasions in relation thereto, shall be deemed to apply to all such bills, drafts and notes as aforesaid, and to the stamp duties and composition payable upon or in respect thereof.

*Bank Notes, when Money or Cash:*—Wherever country bank notes have once been treated by the parties to a transaction as money, no objection can afterwards be taken that they are not so *per se* (a).

Bank notes,  
when money  
or cash.

For instance, in an action to recover money lent, the payment of certain notes having been made to the defendant's credit, and the fact that he had been told the balance afterwards, were held sufficient proof that the notes were paid and had therefore been received by him (b).

So, a person to whom a sum is payable under an agreement having once received it in bank notes, without complaint or objection, cannot afterwards allege this not to be a payment under the agreement (c).

So, if the attorney of a creditor, to whom a bank bill is remitted by the debtor, writes that he will not receive it, without a sum for his costs, but does not return it, it will amount to payment (d).

A banker stands in no different position than any other person, as to his own notes; if he sues, for instance, for goods sold, the defendant cannot support a plea of tender, by showing that he had offered the amount in the banker's

(a) *Gillard v. Wise*, 5 B. & C. 134.

(b) *Gill v. Gillingham*, 1 F. & F. 284.

(c) *Shipton v. Casson*, 8 D. & R. 130.

(d) *Caine v. Coulton*, 1 H. & C. 764.

own notes; he must have recourse to his set-off in respect of the notes (*e*).

*Bequests.*—Bank of England notes pass as “goods and chattels,” or as cash, in a will (*f*). Before they were made a legal tender, they passed by a bequest of “all that shall be in my house at my death” (*g*). Country bank notes will pass under a similar general bequest (*h*).

*Subject to Execution.*—Bank notes, whether of the Bank of England or of private banks, may be taken in execution under a writ of *fieri facias* (*i*); and, consequently, they are now looked upon as goods and chattels within the meaning of the statute against fraudulent conveyances (the 13 Eliz. c. 5), so that a voluntary or fraudulent gift of them is void against creditors (*k*).

Tender or  
payment in.

*Tender or Payment in.*—At common law, a tender in Bank of England notes of a debt was a good tender, if the creditor did not object to receive notes in payment (*l*).

The same is settled of provincial banker's notes (*m*).

Country bankers are not liable to an action, if they pay their notes, upon presentment, with Bank of England notes, so long as Bank of England notes are a legal tender every-where except by the Bank of England and its branches; but they are liable, if they refuse to pay their own notes otherwise than by other country bank notes, or if they insist on paying by any other mode than in such money or currency as constitutes a legal tender, in discharge of an ordinary debt (*n*).

(*e*) *Per* Parke, B., *Foster v. Wilson*, 12 M. & W. 201.

(*f*) *Chapman v. Hart*, 1 Ves. sen. 271.

(*g*) *Popham v. Lady Aylesbury*, Amb. 68.

(*h*) *Mahony v. Donovan*, 14 Ir. Chan. Rep. 262, 388.

(*i*) 1 & 2 Vict. c. 110, s. 12.

(*k*) *Barrack v. McCulloch*, 26 L. J., Chan. 105.

(*l*) *Grigby v. Oaks*, 2 B. & P. 526; *Wright v. Reed*, 3 T. R. 511; *Anon.*, 1 Eq. Cas. Abr. 318, 319.

(*m*) *Polgliss v. Oliver*, 2 C. & J. 15.

(*n*) *Grigby v. Oaks*, 2 B. & P. 526. This subject is more fully gone into under the head of *Cheques*, *supra*, Chap. III. pp. 36 et seq.

Two persons resided at Darlington; one requested the other to give him change for a Sheffield Bank note, which the other did, on a Saturday evening; on Monday morning following, the bank opened for two hours, and then stopped payment; there was no evidence that the note had ever been presented for payment at the bank, but the taker of the note sent it back on the Monday, desiring a return of his money, which was refused.

The Court considered the person, taking the note, under such circumstances, to be under an obligation to give prompt notice to the party from whom he took it of the stoppage of the bank, and to tender the note back to him, and that in this case he had done all that was necessary, in order to entitle him to recover the money he had given for the note; although there had been no presentment at the banker's (o).

Bank notes are transferable by delivery merely, and the person transferring is *not liable* thereon, there being no indorsement to the transferee or taker.

Nor, as it appears, is he liable *on the consideration*, for which the bank note was given, if it turns out to be of no value in the transferee's hands, in consequence of the failure of the bankers who issued and promised to pay it; for, by the delivery, without indorsement, there, *prima facie*, has taken place a sale of the instrument; the one party hands over the goods, or whatever else formed the consideration for paying over the instrument representing the value, or agreed price of the goods, and the other party hands over the note, the whole forming one transaction; and the law does not imply that he guarantees the solvency of the bankers (p).

*Pre-existing Debt.*—If, however, a country bankers' note is handed over on account of a previously-existing debt, the note is not considered as sold: therefore, if the

(o) *Turner v. Stones*, 1 D. & L. 122.

(p) See *per* Littledale, J., *Camidge v. Allenby*, 6 B. & C. 373.

note is presented in due time at the bankers', and the bankers having stopped payment, it is not paid, and due notice of the dishonour of it is given to the transferor, the transferee may have recourse to his original remedy for the antecedent debt (*q*); for the creditor is entitled to cash, and if he takes notes, that is out of favour to the debtor, and it will be inferred, unless there is evidence to the contrary, that the notes were agreed not to be payment, if they turned out to be of no value, without laches in presenting, or other default of the taker. Perhaps this may be a sufficient ground upon which to rest the exception (if it is one) to the rule; but be that as it may, the exception seems to stand upon authority; though the rule is seemingly clear, that a banker's note payable to bearer on demand delivered without indorsement, not in payment of a debt already due, but by way of a single transaction, as of an exchange for goods or for other notes, or for money (in other words *changed*), is sold to the party receiving it, who takes it with all risks, the transaction being *bonâ fide* (*r*).

In either case, whether the bank note is taken at the time of the sale, or for change, or for an antecedent debt, if the transferee can show fraud, as that the transferor knew the banker to be in a state of insolvency at the time, the former may recover from the latter (*s*).

The situation of a banker who gives an accountable receipt, or credit in account, for so much money as a county bank deposited or paid in, promising to pay it, is that of a person who makes a promise on a consideration which must be taken as failing, when the note turns out not to be available to realize the money which it purports to stand for, and on a representation, though not a warranty, of its being good for that for which he takes it.

(*q*) *Camidge v. Allenby*, 6 B. & C. 373; *Lichfield Union v. Greene*, 26 L. J., Exch. 140; 1 H. & N. 884.

(*r*) *Fenn v. Harrison*, 3 T. R. 759; *Erans v. Whyte*, 5 Bing. 485.

(*s*) *Per* Bayley, J., *Camidge v. Allenby*, 6 B. & C. 373; *per* Bramwell, B., in *Lichfield Union v. Greene*, 36 L. J., Exch. 140; 1 H. & N. 884.

It is true that the accountable receipt in the one case, or the entry giving credit in account in the bankers' books on the other, would be *prima facie* evidence to show that cash was actually received by the bank with whom the notes were deposited; but then this receipt is shown to have been given under a mistake of fact, when it is shown to have been given under the idea that the notes were as good as money, and the bank may always show this, and that no money was ever received by them (*t*). This is not a case where there was anything in the shape of a purchase of the notes.

As has been noticed, when country bank notes are taken at the same time that goods are sold, or a consideration of any sort passes, all in one uninterrupted transaction, the transferor of the bank notes is not considered as guaranteeing the solvency of the banking house that issues them, and the transferee takes them for better and for worse.

But although the transferor does not, under these circumstances, take the risk of the solvency of the makers of the notes, he does in all cases (except where there is an express agreement to the contrary, or perhaps circumstances from which a jury might infer an intention to the contrary) warrant the genuineness of the instrument, and must in all such cases bear the loss, if it turns out to be forged. Thus, where a banker discounted Navy Bills for A., and they turned out to be forged, though both parties were ignorant at the time of the discount of anything being wrong, it was held that the bankers might recover against A., and so if they had received in payment bank notes which turned out to be forged (*u*).

*Presentment for Payment at Bank.*—It is not to be doubted, however, that the parties on every occasion of

(*t*) *Timmis v. Gibbins*, 21 L. J., Q. B. 402; 18 Q. B. 722.

(*u*) *Fuller v. Smith*, R. & M. 49; *Smith v. Mercer*, 6 Taunt. 76; *Jones v. Ryde*, 5 Taunt. 488; 1 Marsh. 157.

handing over bank notes, whether upon a consideration antecedent or concomitant, would certainly be bound by an express agreement providing for the insolvency of the maker of the notes; in either case, the party receiving the notes may stipulate—"I will not bear the loss, in case the banker has stopped payment within a reasonable time for presentment of them, and before they are paid." So in the case of a person asking another to give him change for a bank note, it must be inferred that the note is taken conditionally, and that the taker shall not bear the loss (*x*), provided he does all that is necessary on his part, but not otherwise; that is to say, he must present the notes within due time (or, perhaps, he may return them to the person from whom he took them in due time (*y*)), in order to be discharged (*z*).

As to what is due time to present for payment a banker's note, after the receipt of it, various cases have been decided. A. sent his servant to a town, fourteen miles from his residence, to sell cattle; the servant sold them, and took country bank notes in payment from B. (this was about one o'clock on a Friday afternoon), and paid them over to his master (who had been from home the whole of Friday) on settling with him on Saturday evening. A. presented the notes the following Monday morning at the banking house, when it was found that the bank had stopped payment on the previous Saturday, between three and four o'clock. Under these circumstances, the Court considered that A. was entitled to recover from B. the amount of the notes, as A. had not been guilty of such laches, by not presenting the notes on Saturday morning, as made the notes his own, but intimated that the result would probably have been different if the servant had been

(*x*) See *Tan Wort v. Woolley*, 3 B. & C. 446, 447; *Timmis v. Gibbins*, 21 L. J., Q. B. 405; 18 Q. B. 722; *Woodland v. Fear*, 7 El. & Bl. 519.

(*y*) Per Lord Lyndhurst, C. B., 1 C. & M. 641, 643.

(*z*) See *Rogers v. Langford*, 1 C. & M. 637; *Henderson v. Appleton*, cited *Id.* 642.

identified with the master (*a*). It seems if the master had himself sold the cattle, and taken the notes for them, in one uninterrupted transaction, he would at once have made his election to take the notes as payment, according to the doctrine above stated, so that, independently of the question of laches, he must, in that case, have borne the loss. The Court, if the case is duly reported, does not seem to have had present to their minds the distinction between giving bank notes, in completion of a sale, and giving them in discharge of a precedent debt.

It is quite clear in general, that in case of a country bank note, made payable at the banking house, there must be a presentation for payment there, before a right of action accrues (*b*), and merely alleging the insolvency of the house as a reason for nonpresentment is impertinent; nor will a declaration by the banker, that he will not pay his notes, dispense with presentment (*c*); the note must be presented, and a demand of payment made at the banking house, unless the banker has discharged the holder from presentment and demand (*c*); nor is it a sufficient excuse to say that the banker was from home, had absconded, and left no effects at the banking house (*d*).

The stopping payment by a bank which issues notes payable on demand does not preclude the necessity of demanding payment in order that interest may become payable (*e*). Therefore, where a banking company stopped payment and it was wound up, and the debts were being paid in full, it was held that interest at 5*l.* per cent. was payable on all promissory notes, drafts and other negotiable securities current at the time of the stoppage, not from the time of the stoppage, but from the respective times of the

(*a*) *James v. Houlditch*, 8 D. & R. 3.

(*b*) *Saunderson v. Bowes*, 14 East, 500; *Dickenson v. Bowes*, 16 East, 110.

(*c*) *Howe v. Bowes*, 5 Taunt. 30. See, however, ante, p. 61, and next page.

(*d*) *Sands v. Clarke*, 8 C. B. 751.

(*e*) *In re Herefordshire Banking Company*, 36 L. J., Chanc. 806. See ante, p. 61.

claims in respect thereof being sent in to the liquidators, the stoppage of the bank not operating to dispense with the necessity of making a demand (*f*).

If bank notes are transferred in payment of a debt, and it turns out that, at the time of the transfer, though unknown to the creditor, the bankers had already stopped payment and were insolvent, and there was no presentment at the banking house and demand of payment, on the one hand, but, instead, the holder, within a reasonable time, gave the party handing over the notes, notice of this fact and offered to return them, which they refused, this is a sufficient foundation to entitle the transferee to recover in an action for the original consideration, for which the notes were transferred (*g*).

The presentment, if made, must be in a reasonable time; there must be no laches, otherwise the holder is considered as making his election thereby to take to the notes (*h*). In cases between a holder of bank notes, and the party from whom he has received them (not being the makers), it seems that to go through the form of presentment is always immaterial, after insolvency and stoppage by the bankers, *provided* that within a reasonable period—a period for this purpose may be reasonable, which, nevertheless exceeds the time within which presentment ought to have been made—the transferee gave the other party notice that the notes were valueless, and offered to return them (*i*).

There is, however, a distinction between the situation of a person with whom notes are deposited, and one to whom they are paid in discharge of an antecedent debt, in the event of the notes being worthless: thus, if A. deposits notes of a country bank with another country bank, taking

(*f*) *In re East of England Banking Company*, 38 L. J., Chanc. 121.

(*g*) *Robson v. Oliver*, 10 Q. B. 704.

(*h*) *Camidge v. Allenby*, 6 B. & C. 373; *Lichfield Union v. Greene*, 26 L. J., Exch. 140; 1 H. & N. 884.

(*i*) *Per Erle, J.*, 10 Q. B. 717; and see *Rogers v. Langford*, 1 C. & M. 637, where Lord Lyndhurst says, "It is possible, if you had returned the notes in due time, that might have done instead of presentment."

the accountable receipt of the latter for the sum represented by the notes, and it turns out that the notes are worthless, and the bank, as soon as they learn this, give notice to the depositor and offer to return the notes, but are refused, neither the bank nor the depositor being aware at the time of the deposit, that the bankers, who issued the notes, had then stopped payment; the depositor cannot have an action against the banking house with whom the notes were deposited, either for money lent, or money had and received (*k*).

*Notice of Dishonour.*—The same rule as to notice of dishonour of bills of exchange, and notice of dishonour of country bankers' notes, has always prevailed; the rule is, it must be given by the post which leaves on the day following that on which the holder gets information of the fact.

An illustration of this position is afforded under the following circumstances.

A., being previously indebted to B. in 500*l.*, on a Friday, about eight or nine a.m., paid to B., at his residence, at Wantage, 490*l.* in notes of the Newbury Bank, and 10*l.* in a note of the Wantage Bank, B. giving him a receipt for 500*l.* on the back of a promissory note, by which the loan had been secured.

B. immediately sent 450*l.* of the notes to his bankers at Wantage, with orders to transmit the Newbury Bank notes (which were made payable on demand at the bank of Newbury, or at the bank of Messrs. Barnard & Co., London) to London, to buy an Exchequer bill. Wantage is distant from Newbury about eighteen miles, and was a two days' post from one place to the other; the post left Wantage for London at half-past five o'clock, p.m., every day, *except Saturdays*.

When B.'s messenger got to the bank, and delivered his message, with the above order, one of the partners said it

(*k*) *Timmis v. Gibbins*, 21 L. J., Q. B. 403; 18 Q. B. 722.

would be dangerous to send the notes to London, and, therefore, declined or refused to send them by post that evening, but offered to enclose them on the Saturday evening, in their packet which they usually sent in the course of their business as bankers, two or three times a week, by the coach, to London, and which packet, he said, would be in London on Monday. This was ultimately agreed to, and on the Saturday evening 450*l.* of Newbury Bank notes were, by the bankers at the Wantage Bank, cut in halves, and one set of halves enclosed in their packet, and transmitted the same evening to London. They usually sent their notes half by the coach, and half by the post, and the other set of halves was sent by post on the Sunday evening, addressed to the London correspondents of the Wantage Bank; these halves reached them between ten and eleven a.m. on the Monday, and the packet, containing the other halves, was delivered to them somewhat later the same day.

The Newbury Bank stopped payment the same morning, but their correspondents in London, Messrs. Barnard & Co., continued to pay the Newbury notes the whole of Monday, but not afterwards, and the notes in question would have been paid if they had been presented in the course of Monday. When they were presented to Barnard & Co. on Tuesday they were dishonoured.

Notice of the stopping of the Newbury Bank being communicated to B. on the evening of Monday, he immediately sent a messenger to A.'s house, who stated it to A.'s wife, A. himself having gone to bed; A., the same evening, said he would take the notes again, and return them to the person from whom he had received them. He afterwards refused to take back the notes.

In an action against him by B., it was held that B. was entitled to recover, for that if the notes had been sent direct by the post to Newbury, they would not have been paid as the bank had stopped on the Monday; and that sending the half notes to London was a reasonable pre-

caution, and one which, therefore, B. had a right to adopt (*l*).

*Exchanging Notes.*—It is a custom among country bankers who reside in the same district to exchange each other's notes once or twice a week, something after the same plan as that adopted at the London or county clearing house with respect to cheques.

This is a great convenience to all parties, and has the same effect as the practice with respect to the clearing house, in lessening the amount of bank notes or gold required for the circulation of the district; it also operates as a check to a redundancy of issues, by any particular bank, within the district.

The notes of such bankers as reside beyond the district, when they come into the hands of the bankers within the district, are not sent to the issuers of them, but are sent at once to London, for the purpose of being presented for payment to the bankers to whom they are addressed, or upon whom they are drawn.

*Bankruptcy of Country Banks.*—Where one of two country banks became bankrupt, each at that moment having in their hands bank notes of the other, which together with other securities were reciprocally of nearly the same amount, and the assignee of the bankrupt house knowing this presented the notes, and obtained payment of them from the solvent bank at their London agents, who were unaware of the relative situation of the two banks, the money was held to be recoverable by the solvent bankers from the assignee, it being shown, that, on the balance of accounts between the bankers, not only was nothing owing by the solvent bank, but that there was a sum of 22*l*. in their favour (*m*).

A country bank consisted of two partners, A. and B.,

(*l*) *Williams v. Smith*, 2 B. & A. 496.

(*m*) *Edwards v. Newman*, 1 B. & C. 418.

B. committed an act of bankruptcy, and became bankrupt, at a time when another bank in the country held bank notes of theirs, payable at the house of R. & Co., the correspondents, in London, of the country bank first referred to. These notes were presented to R. & Co. for payment, but a part only was paid by R. & Co. out of the funds of A. and B. in their hands, A. paying the residue by indorsing to the country bankers a bill of exchange, given by a debtor to the firm of A. and B., for a larger amount, which they consented to take in payment, and when due it was paid to the latter bank by the acceptors. Afterwards A. committed an act of bankruptcy, and a joint commission issued, and the assignees claimed from the second country bank the proceeds of the bill, and also the sum paid on the bank notes by R. & Co., on the ground that the partnership having been dissolved by the act of bankruptcy of B., of which A. had notice, he was not competent to dispose of the partnership property.

The Court held, that as A. had done no more than satisfy a claim, which was complete at the time of the bankruptcy of B., as he was warranted in doing, the action was premature, until an account had been taken in equity, and it was ascertained whether there was a balance against B. or not—that it was impossible to contend that a partnership, when one partner commits an act of bankruptcy, must immediately shut up the house—and that A.'s having acted in making the payment, with a knowledge of the act of bankruptcy of B., made no difference (n).

Messrs. Forsters, bankers at Carlisle, had an agreement with Surtees, bankers at Newcastle-upon-Tyne, by which Forsters were weekly to transmit to the Newcastle Bank all the notes of the Newcastle Bank, and certain other specified banks, which they, Forsters, might have in their possession; and the Surtees were, in exchange every week, to return to the Carlisle Bank; and any balance on one

(n) *Harvey v. Crickett*, 5 M. & S. 335; *Woodbridge v. Swann*, 4 B. & Ad. 633; *Morgan v. Morgan*, 9 Exch. 145; 23 L. J., Exch. 21.

side or the other was to be made up by that party drawing a bill on a banker in London, at twenty days, in favour of the other party. On these facts, the bank notes so sent by Forsters were held to constitute a debt from Surtees to the Carlisle Bank, which Surtees might pay by a return of bank notes under the agreement; but if they made no such return, or a return short of the amount due, and gave no bill for the balance, such balance was a debt against them, which was proveable under a *fiat* against Surtees (o).

The Newton Abbotts Bank advanced to A. 500*l.* upon the security of his promissory note, payable on demand, with interest, and dated 7th November, 1840. On the 17th of July, 1841, the bank stopped payment, at which time A. held bank notes, and interest notes of the bank, to the amount (with the interest due on the notes) of 581*l.* 5*s.*, being more than sufficient to have paid and discharged A.'s promissory note and interest; in fact, he had collected such notes expressly for the purpose of taking up, and paying his promissory note with Newton Bank notes; and for these, he alleged, he had given full value.

The bank subsequently, without notice to A., deposited his promissory note, together with other securities, with Messrs. Williams, their correspondents in London; for the purpose of securing the repayment of such sums of money as they might advance to the Newton Abbotts Bank, and Williams & Co. held, on the whole, securities belonging to the Newton Abbotts Bank to a greater amount than the balance due to them from the Newton Abbotts Bank.

Williams & Co. compelled A. to pay the amount of his promissory note and interest to them, and refused to allow him to set off the notes of the Newton Abbotts Bank which he held.

A., in ignorance of the fact that Williams & Co. held securities to a greater amount than the balance due to them, afterwards proved under the bankruptcy for the bank notes which he held.

(o) *Forster v. Surtees*, 12 East, 605.

The assignees of the Newton Abbotts bankers paid Williams & Co. what was due to them, after having credit for the sum paid by A. on the promissory note, and took from Williams & Co. all the remaining securities.

As A. would have had a right of set-off against the bankrupts, if he had continued in possession of the promissory note, he could not be deprived of that right by his ignorance of the state of accounts between Williams & Co., and the bankrupts, and so the Court held the assignees to be bound, on his withdrawing his proof, to repay to him the amount of his promissory note, on his giving up Newton Abbotts Bank notes to the same amount (*p*).

Proof.

*Proof.*—With respect to proving in bankruptcy upon the bank notes of a bankrupt, the following points have been settled.

It has been questioned, whether a claim founded on notes of a country banker, payable on demand, when no demand has been made, would support a *fiat* against the banker; but, at any rate, it seems clear, that when such notes have been given in payment of an antecedent debt, the creditor may rely on that debt, if the notes are really worthless (*q*).

A partner in a bank, who signs the bank notes “For A., B., &c.” (stating *all* the names in the firm, and appending his signature,) cannot, on the bankruptcy of the partnership, be liable to proof against his separate estate on such note (*r*).

A person buying up bank notes of a firm, after its bankruptcy, cannot prove for them, unless he shows that the vendors of them were severally entitled to prove in respect of the notes they sold (*s*); but a person owing a debt to a banking house may, even after they have actually stopped payment, buy up their bank notes, for the purpose of

(*p*) *Ex parte Staddon*, 3 M., D. & De G. 256.

(*q*) *Simpson v. Sikes*, 6 M. & S. 295, 312.

(*r*) *Ex parte Clarke*, 1 De Gex, 153; 14 M. & W. 469.

(*s*) *Ex parte Rogers*, Buck, 490; *Ex parte Delaware*, 3 Ir. Eq. R. 573.

setting off their amount against his debt to them, not having at the time notice of an act of bankruptcy by either of the members of the firm (*s*); but he could not set off notes, taken after he knew of an act of bankruptcy by *some* of the partners (*t*).

One person may prove, on behalf of a large number of creditors, each holding notes of the bank, under similar circumstances with himself, provided that he does not attempt to interfere in the choice of assignees, or with the certificate (*u*); but these modes of proof are only allowed where necessity or consent is the foundation; Lord Eldon, in one case, required the proof to be made in the name of every one of 500 partners (*x*).

*Lost Notes.*—Bank of England notes cannot be followed by the legal owner into the hands of a *bonâ fide* holder for good consideration or value without notice; and the holder of a Bank of England note is, *primâ facie*, entitled to prompt payment of it, and cannot be affected by the previous fraud of any former holder in obtaining it. Payment, therefore, cannot be refused, when it is presented, unless the bank can show that he was privy to the fraud (*y*).

If A. pays a bank note to B., who pays it in discharge of a debt to C., who presents it at the Bank of England, where it is stopped on the ground that it has been fraudulently obtained; and then A. pays the amount to C., in consideration that his debt, due from B., had not been discharged, partly through his (A.'s) means; still A. cannot recover in trover against the Bank of England (*z*). The

(*s*) *Ibid.*

(*t*) *Dickson v. Cass*, 1 B. & Ad. 343; *Hawkins v. Whitten*, 10 B. & C. 217.

(*u*) *Ex parte Gordon*, 1 Mont. & A. 282; *Ex parte Keys*, 9 L. J., Chanc. 11.

(*x*) *Ex parte Bank of England*, 2 Glyn & J. 362.

(*y*) *Solomons v. Bank of England*, 13 East, 135, n.

(*z*) *Benjamin v. Bank of England*, 3 Camp. 417. The bank is in the practice of stopping the payment of a note that it has notice has been stolen, upon receiving an indemnity from the applicant, and this has

stopping payment does not appear to be a duty, but is merely an accommodation rendered to the public (z).

A money changer, changing a Bank of England note, which had been stolen, but giving full value for it, and taking it *bonâ fide*, not having at the time knowledge that it had been stolen, was held entitled to recover from the bank the amount of the note, although he had the means of knowledge if he had taken proper care of certain notices, advertising its robbery, which had been previously delivered to him.

The money changer carried on business in Paris; he had received, some time before the transaction, a printed advertisement, stating the note to have been stolen, among others, from Messrs. A., in England; he nevertheless changed it *bonâ fide* about the middle of the year next following that in the course of which he had received the notice: it was held that he was entitled to recover from the bank the amount of the note (a).

If a bank note is lost, or is stolen out of a letter put into the post-office, no action lies to recover it, or its value, at the suit of the loser, against the Postmaster-General (b).

On the trial of an indictment for forgery, the loss of the bank note alleged to have been forged, is not necessarily a bar to a conviction; thus, where a person swallowed the bank note that he was indicted for having forged, it was held, that he might have been convicted without the production of the bank note (c).

Indemnity on  
loss.

*Indemnity on Loss.*—It seems, that the owner of a *destroyed* note could not recover in an action against the

been declared to be a reasonable practice. *Miller v. Race*, 1 Burr. 460; see 4 A. & E. 36.

(z) *Ibid.*

(a) *Raphael v. Bank of England*, 25 L. J., C. P. 33; 17 C. B. 161. See also *Willis v. Bank of England*, 4 A. & E. 21; *Bank of Bengal v. Fagan*, 7 Moore, P. C. 72.

(b) *Whitfield v. Lord Le Despencer*, Cowp. 754. A deputy postmaster, however, who has been guilty of neglect in not properly delivering letters is liable. *Horder v. Dalton*, 1 C. & P. 181; *Towning v. Goodchild*, 3 Wils. 443.

(c) *Anon.*, Buller, J., cited 2 Camp. 211.

makers; or, at least, it may be said to be a question not wholly without doubt (*d*), and he was practically obliged to have recourse to a Court of Equity in most instances. The production of the note was essential to his right to recover. But now it is enacted, that in case of any action founded on a bill of exchange or other negotiable instrument, it shall be lawful for the Court or a judge to order that the loss of such instrument shall not be set up, provided an indemnity is given to the satisfaction of the Court or judge or master against the claims of any other person upon such negotiable instrument (*e*).

A bank note is a negotiable instrument within the meaning of this provision, and a banker, upon an indemnity being given, will be restrained from setting up the loss as a defence to an action upon the note (*f*).

*Half Notes.*—The practice of cutting notes in half for the purpose of transmission by post is legal (*g*). If A. cuts a note in half and sends one half by post to B., retaining the other half, upon a condition which B. does not perform, the half so sent may be recovered from B (*h*). If half of a note was lost, it was the rule, apparently,

(*d*) *Hansard v. Robinson*, 7 B. & C. 90.

(*e*) 17 & 18 Vict. c. 125, s. 87. The benefit of this provision is confined to a plaintiff suing on a lost note in one of the superior Courts of common law, and does not apply to his suing in the County Courts or other inferior Courts, unless an order in council has extended the statute to these Courts. *Noble v. Bank of England*, 2 H. & C. 355; 33 L. J., Exch. 81.

(*f*) *McDonnell v. Murray*, 9 Ir. Com. Law Rep. 495.

(*g*) *Redmayne v. Burton*, 2 L. T., N. S. 324. In a notice emanating from the Post Office, of August, 1873, with reference to sending by post letters containing bank notes, the following advice is given:—"It is strongly recommended when bank notes are sent by post that they should be cut in halves, and the second halves not despatched until it has been learnt that the first have been received." A person may be indicted for stealing or embezzling the halves of bank notes sent in a letter. *Rex v. Mead*, 4 C. & P. 535. Where a man was indicted at common law for stealing one half of a Bank of Ireland note for 20*l*., the indictment was held bad, the article in question not being the subject of an indictment for larceny at common law. *Reg. v. Murtagh*, 1 Crawford & Dix's Irish Circuit Cases, 355.

(*h*) *Smith v. Mundy*, 29 L. J., Q. B. 172.

not to allow the owner of the other half to recover, if he could not either produce an entire note, or prove that the other half had been actually destroyed (*i*) ; but the above statute will be equally applicable in this case, if indeed it would not, independently altogether, be a good defence for the bankers to show, that they had paid the amount once to the original owner of the whole note, upon his presentment of his half ; for although the holder of the lost half might show that it came to his possession *bonâ fide*, still it is said, that the taker of a half note necessarily takes it under suspicious circumstances, and he is not bound to take the half note at all ; he ought to bear the loss, it seems (*j*).

Rights of  
finder.

*Rights of Finder.*—Where A. had picked up some bank notes on the floor of B.'s shop, and handed them over to B. (who was not aware of the notes having been on the floor) to keep till the owner should appear, and B. caused advertisements to be inserted in various newspapers, but no one appeared to claim them, and three years elapsed, and

(*i*) *Mayor v. Johnson*, 3 Camp. 324.

(*j*) See Bayley on Bills, 379, 6th edit. Willes, J., in *Redmayne v. Burton*, 2 L. T., N. S. 324, said, "My opinion is that bankers would be liable to pay without an indemnity, as any person taking half a note would take it with notice." *Query*, which half of the note? Mr. Morse upon the loss of a part of a bank note says, "A piece or fraction only of a bank bill is non-negotiable. Negotiability is an attribute of the bill as a whole. When it has been severed into parts, this quality pertains to no one of them. They are not even payable *pro tanto*, according to the ratio of the size of the part to the whole. Any person who takes a piece, takes it subject to all the equities which burdened it in the hands of the party transferring it. . . . Lord Ellenborough has expressed an opinion, that the rightful owner of the whole bill, holding a half only, could not maintain his action, because the other half might come into the hands of a *bonâ fide* holder who could sue, and so two recoveries might be had. (*Mayor v. Johnson*, 3 Camp. 324.) But, says Judge Marcy (in *Hinsdale v. Bank of Orange*, 6 Wend. 378), this implies the negotiability of the second half. If it is non-negotiable, of course it can never come into the hands of a *bonâ fide* holder, and Lord Ellenborough's supposed difficulty can never arise ; that it is non-negotiable 'is as clear to my mind as the proposition is, that a part is not equal to the whole.' Certainly the impression in the community is so general to the same effect, that it would be difficult to imagine that any person could in real honesty and good faith receive a half of a bank bill as money." Morse on Banking, pp. 413, 414.

then A. requested B. to return them, tendering the costs of the advertising, and offering an indemnity, and B. refused; A. was held entitled to recover the notes in trover against B. (*k*).

It is very important, in the case of a loss of bank notes, to bear in mind the general principle: if a person finds lost property, and keeps it, having, *at the time of finding it*, no means of discovering the owner, he is not guilty of larceny, if he afterwards has means of finding the owner, and, nevertheless, retains the property to his own use (*l*).

If the finder had seen the notes drop from the owner's pocket; or, if the notes had had the name of the owner written upon them; or, if there had been other similar circumstances, to enable the finder to know who was the owner, *at the moment he picked up the notes*, that would have been different (*l*).

Even if a finder instantly appropriates the note, *animo furandi*, but under such circumstances as to warrant a jury in finding, that, *at the time of the appropriation*, he really believed that the owner could neither find the note nor be found himself, such appropriation is not larceny (*m*).

In the case of a note being marked, or inscribed, so that the real owner might be found, it seems, there must be proof that the finder can read these marks, &c., before he can be convicted of stealing (*n*), or that he got them read to him.

Under the law, as formerly expounded, it was considered, that the rights of the transferee might be affected by the degree of caution that he used in taking the note.

But as previously stated the law has been laid down in different terms, and the Courts have shown a desire to

(*k*) *Bridges v. Hawkesworth*, 21 L. J., Q. B. 76; 15 Jur. 1079.

(*l*) *Reg. v. Dixon*, 25 L. J., M. C. 39.

(*m*) *Reg. v. Thurborn*, 1 Den. C. C. 388, 395, 396.

(*n*) *Reg. v. Preston*, 2 Den. C. C. 353. See *R. v. Moore*, 30 L. J., M. C. 77; *R. v. Christopher*, 28 L. J., M. C. 35.

retrace some of the steps that led to previous decisions. Even gross negligence in taking a note is not now of itself a reason why a holder for value should suffer. Thus, six Bank of England notes, for 500*l.* each, were stolen in November, 1852, from Brown & Co., in Liverpool, who immediately published notices of the robbery, and of the numbers of the notes, in the French and English languages, and circulated them in England, France, and other countries; fresh notices to the same effect were published in April, 1853, one of them being left in due course, in 1853, at the place of business of one St. Paul, a money changer in Paris; in June, 1854, a stranger entered the shop, and asked what was the exchange of the day, and produced a 500*l.* Bank of England note; the file of notices, kept in the shop, was not looked at, but the stranger was asked to write his name, and to produce his passport, and St. Paul, finding the name so written and that in the passport to agree, gave change for the note, at the current rate of exchange, and then remitted the note to his correspondent in London, who presented it at the Bank of England and was refused payment; the bank was held bound to pay, on the ground that a person taking a negotiable instrument *bonâ fide*, and for full value, is entitled to recover on it, although it has been stolen, and he took it negligently (*p*).

Statute of  
limitations.

*Operation of the Statute of Limitations on Bank Notes.*—The notes of the Bank of England until paid by the bank are not, like a promissory note of a private person payable on demand, affected by the Statute of Limitations (*q*), notwithstanding the notes may not be presented for payment, or payment be not made for very many years after their issue, for they form part of the established currency of the country. With regard to country and other bank

(*p*) *Raphael v. Bank of England*, 25 L. J., C. P. 33; 17 C. B. 161; *Bank of Bengal v. Macleod*, 7 Moore, P. C. C. 35. See *ante*, p. 356.

(*q*) *Norton v. Elham*, 2 M. & W. 461. The statute runs from the date of the note in such case, although no demand is ever made.

notes of banks having authority to issue them, a similar principle governs the law of their circulation and currency. By the acts regulating the issue of bank notes in Ireland (*r*), and in Scotland (*s*), it is expressly enacted, "that all bank notes shall be deemed to be in circulation from the time the same shall have been issued by any banker, or any servant or agent of such banker, until the same shall have been actually returned to such banker or some servant or agent of such banker." The 7 & 8 Vict. c. 32, which regulates the issue of bank notes in England, does not contain this provision; but, as we have seen, the 17 & 18 Vict. c. 83, after specifically defining, s. 11 (*t*), what shall be deemed bank notes within these acts for the purposes of issue and stamping, enacts, sect. 12, "that all clauses, provisions, regulations, &c., contained in any act or acts, relating to the issue of such notes," &c., (and of course including the above-mentioned acts,) "shall be deemed to apply to all such notes;" and consequently it follows, as a necessary consequence, that until they are returned to, or paid, cancelled or redeemed by, the banker issuing them, mere lapse of time does not affect their circulation or value any more than it does Bank of England notes (*u*).

(*r*) 8 & 9 Vict. c. 37, s. 17.

(*s*) 8 & 9 Vict. c. 38, s. 8.

(*t*) *Ante*, p. 336. These acts are in the Appendix.

(*u*) Mr. Morse, in his Treatise on Banks and Banking, put the non-liability of bank notes to the operation of the Statute of Limitations on a higher and different principle. He says, pp. 403, 404, "A bank note is not subject to the running of the Statute of Limitations, as any other simple indebtedness, or promise to pay, would be, although the bill is not distinguishable in form from such a promise. Its purpose of circulation necessarily involves this result. Every time that it is re-issued by the bank the promise is renewed, and it must usually be impossible in the case of any particular bill to say how often it has passed into, and again has been paid out by, the bank, or when it was last so paid out. But even if in any individual case it could be shown that the last issue was at a time so long past that the period of the statute has since elapsed, yet another objection, which goes to the root of the matter, still remains behind. For lapse of time, in the case of these instruments, affords no presumption of their having been paid. On the contrary, their existence in other hands than those of the bank, is at least *prima facie* evidence of non-payment, since they are never paid, and, generally speaking, payment can never be enforced upon them at law, unless they are surrendered to the promisor. Further, as already shown, a new contract and

Forgery.

*Forgery.*—As regards forging and passing bank notes, knowing them to be forged, it is enacted by 24 & 25 Vict. c. 98, s. 12, that whosoever shall forge or alter, or shall offer, utter or dispose of, or put off, knowing the same to be forged or altered, any note, or bill of exchange, of the Bank of England, or of Ireland, or of any other body corporate, company, or person carrying on the business of bankers, commonly called a bank note, a bank bill of exchange, or a bank post bill, or any indorsement on, or assignment of any bank note, bank bill of exchange, or bank post bill, with intent to defraud, shall be guilty of felony (x).

A *conditional* uttering partakes of the criminal qualities of any other uttering; thus, where a person gave a forged acceptance, knowing it to be so, to the manager of a bank, where he kept an account, saying he hoped this bill would satisfy the bank as a security for the balance he owed them; this was holden a sufficient guilty uttering (y).

When the authority of a banking company to draw and issue notes is recognized by statute, it is not necessary to prove it by the charter or otherwise (z).

On an indictment for disposing and putting off forged bank notes, knowing them to be forged, the prosecutor

a new cause of action is created by each transfer, so that the statute could begin to run only from the time when the last holder came into possession." In an article in the Money Market Review for November 9, 1867, page 482, the following remarks occur with reference to this subject, "Country bank notes, as well as the notes of the Bank of England, are *promissory* notes payable to the bearer on demand, and as to them, the promise to pay may be regarded as a promise which is renewed from time to time, and every time the note changes hands, and may thus be subsisting for any number of years, until the note is either cancelled or paid. The Statute of Limitations must be specially pleaded, and the banker or maker of the note, in pleading the statute, would have to plead that he had not made the promise at any time within the six years, and he could not prove that plea against the evidence of the note in the hands of the bearer, which became a new and distinct promise to him the moment he became the holder or bearer of it."

(x) By the above statute the punishment on conviction is penal servitude for life, or for a term not exceeding five years (27 & 28 Vict. c. 47, s. 2), or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

(y) *Reg. v. Cooke*, 8 C. & P. 582.

(z) *Rez v. M'Keay*, 1 Mood. C. C. 130.

has a right to give in evidence the fact of other forged notes having been uttered by the prisoner, for the purpose of proving his knowledge of the notes in question being forged also (*a*); and delivering to another person a forged bank note, to be put off or passed by the latter, is a “disposing of and putting off” within the statute (*b*).

Purchasing or receiving forged bank notes, knowing them to be so, is felony (*c*).

*Engraving Plates for Bank Notes.*—It is also felony to engrave plates for the notes of the Bank of England or of Ireland, or of bankers, or to manufacture or sell paper resembling the paper used by the Bank of England or Ireland for their notes or bills, or their watermarks, without authority (*d*).

*Larceny.*—As regards the stealing of bank notes, where a person intercepts notes at a post office, which are in course of transmission from one branch of a banking company to another (at which they had been issued), he may be found guilty of the larceny of the notes described as money, though they were not in circulation at the time (*e*).

*Obtaining Money or Goods by means of forged or worthless Notes.*—If a person gives forged country bank notes in payment for goods, and, when the seller objects to receive them, assures him they are good, knowing them at the time to be valueless, he is indictable for cheating and defrauding the seller of the goods; but the evidence to show the notes to be bad and worthless must be clear and full. In a case where there was some evidence to show

(*a*) *Rex v. Wylic*, 1 N. R. 92.

(*b*) *Rex v. Palmer*, 1 N. R. 96. See *R. v. Giles*, 1 Moo. C. C. 166.

(*c*) 24 & 25 Vict. c. 98, s. 13.

(*d*) *Ib.* ss. 14—18.

(*e*) *Reg. v. West*, 26 L. J., M. C. 6; 7 Cox, C. C. 183.

that the bank, of which the paper in question purported to be the notes, had stopped seven years previously, and the notes appeared to have been exhibited under a commission of bankruptcy against that bank, and the words importing the memorandum of exhibit had been attempted to be obliterated, but the names of the commissioners remained on each of them, and the notes had never been presented for payment at the bank, or at Sir J. Esdaile's, in London, where they were made payable, the judges held the evidence insufficient to show the notes to be bad (*f*).

So, it is not sufficient to show the bankruptcy of two out of three partners in a bank, and the shutting up of the house; for the third being solvent, the note, if presented to him, may perhaps be paid (*g*). So, even where the bank had ceased business twenty years previously, and the note uttered was old, discoloured and dated many years before the time of giving it, and had been regularly cancelled and withdrawn from circulation, the makers having traced a large cross over the face of it, but the proceedings in bankruptcy against the bankers were not produced, it was held that the prisoner, though he gave a false address when asked, could not be convicted of a false pretence, as there was no evidence of his knowing the note to be cancelled and unavailable at the time he uttered it (*h*).

A person passing a note of a country bank for 5*l.*, payable on demand, as a good note, and as of the value of 5*l.*, knowing at the time that the bank is insolvent and has stopped payment and cannot pay the note in full, may be indicted for obtaining money by false pretences (*i*).

A person fraudulently offered a 1*l.* Irish bank note as a note for 5*l.*, and obtained change as for a 5*l.* note; though the prosecutor could read, and the note upon its face clearly afforded the means of detecting the fraud, it was

(*f*) *Rex v. Flint*, R. & R. 460.

(*g*) *Rex v. Spenser*, 3 C. & P. 420.

(*h*) *Reg. v. Clark*, 2 Russ. C. & M. 296, n.

(*i*) *Reg. v. Evans*, 29 L. J., M. C. 20.

held, that this was obtaining money by means of false pretences (*k*).

It is now a felony for any one, with intent to defraud, to demand, receive or obtain, or procure to be delivered or paid to any person, or to endeavour to receive or obtain, or procure to be delivered or paid to any person, any chattel, money, security for money, or other property whatsoever, under or by virtue of any forged instrument, knowing the same to be forged (*l*).

(*k*) *Reg. v. Jessop*, 27 L. J., M. C. 70. See, also, *R. v. Woolley*, 1 Den. C. C. 559.

(*l*) 24 & 25 Vict. c. 98, s. 38.

## CHAPTER XXXIX.

## BANK POST BILLS.

QUESTIONS often arise respecting bank post bills in the course of the business of bankers; we will, therefore, devote a word or two to the subject.

Bank post bills are instruments in common use among bankers for the remittance of money to persons in the country or abroad. They are payable to order, and at a certain number of days after sight (*a*). When indorsed by the payee they become payable to bearer, and are negotiable as other bills or notes, until ultimately paid by the bankers issuing them. The peculiar quality of a bank post bill is its safety and facility as a medium of transmitting money to a distance.

Bank post bills issued in London by the Bank of England are not by law payable at the branches in the country; but they are usually cashed at the branches, or by bankers, for a commission (*b*). By 9 Geo. IV. c. 81, bankers in Ireland are prohibited issuing or re-issuing bank notes, or bank post bills, without their being made payable at the places where issued, although they may be made payable at several places. By 5 Geo. III. c. 49, s. 2, banks in Scotland may issue bank post bills payable seven days after sight, as in England.

Giving cash for a bank post bill is a payment within the protection of the Bankruptcy Act (*b*), provided it is *bonâ fide* made to the bankrupt before the filing of a petition for adjudication of bankruptcy, and without notice of an act of bankruptcy. Bank post bills are considered as ready money when unobjected to on the score of being drafts (*c*).

(*a*) See a form of a bank post bill, in *Willis v. Bank of England*, 4 A. & E. 22, n., and in *Forbes v. Marshall*, 11 Exch. 167; 24 L. J., Exch. 305. In the latter case, Pollock, C. B., Alderson, B., and Platt, B., considered bank post bills to be bills of exchange, but Martin, B., however, thought them to be promissory notes. The Bank of England has issued bank post bills since the year 1738. See, also, *Block v. Bell*, 1 M. & R. 149.

(*b*) *Willis v. Bank of England*, 4 A. & E. 21.

(*c*) *Cwine v. Coulton*, 1 H. & C. 764; *Tiley v. Courtier*, 2 C. & J. 16.

## CHAPTER XL.

## EXCHEQUER BILLS AND BONDS.

It may be useful to refer to the law regulating the issue and currency of exchequer bills (*a*). We have seen that they are negotiable instruments, payable to bearer, and pass by delivery. They may, however, be made payable to order, by filling in the blank with the name of the payee, in which case they are only transferable by his indorsement (*b*). They are subject to the general lien of bankers, unless deposited by a customer with his bankers for a special purpose, as, for instance, to get the interest upon them, or to exchange them for new bills (*c*). If bankers make advances on a deposit of exchequer bills, which turn out to be forgeries, they will be entitled to recover back their advances immediately upon the bills being repudiated at the Exchequer (*d*).

The bills are issued annually, under the direct authority of parliament, for money advanced for the use of the government, in anticipation of the receipt of the ordinary revenue, and are made a specific charge upon the consolidated fund of the United Kingdom or its growing

(*a*) The 29 & 30 Vict. c. 25; 38 & 39 Vict. c. 45; 40 Vict. c. 2, are the statutes which regulate the issuing and paying off exchequer bills since the 1st of April, 1867. The former statutes were the 43 Geo. 3. c. 1; 4 & 5 Will. 4, c. 15; 5 & 6 Vict. c. 66; 24 Vict. c. 5, and 25 Vict. c. 3, as to the bills issued before that period.

(*b*) *Wookey v. Pole*, 4 B. & Ald. 1.

(*c*) *Brandao v. Barnett*, 12 Cl. & F. 787; *ante*, p. 151.

(*d*) *Bank of England v. Tomkins*, 6 Jurist, 348. On the discovery of the extensive forgeries of exchequer bills, which were committed by Beaumont Smith, a clerk in the Exchequer Office, in the year 1842, a commission of inquiry was directed by the 5 & 6 Vict. c. 11, to issue, with instructions to the commissioners to report upon the circumstances under which the bills had been issued, and the holders became possessed of them. Afterwards the Treasury was authorized by the 6 & 7 Vict. c. 1, to pay the *bonâ fide* holders of these forged documents.

produce (*e*). Cash under the control of the Court of Chancery may be invested in exchequer bills (*f*). They are receivable in payment of government taxes or duties (*g*).

The bills are prepared and made out at the receipt of the Exchequer, and may be in such form, with coupons for interest, as the Commissioners of the Treasury may think most safe and convenient, and may contain one common sum or different sums for the principal moneys (*h*). They must, however, be signed by the Comptroller-General of the Exchequer, or by the Assistant Comptroller, in his own name, and his authority to do so in either case must be duly notified in the London Gazette, before the bills are signed or put into circulation (*h*).

The rate of interest varies, but it cannot exceed at any time 5*l.* 10*s.* per cent. per annum, and is payable half-yearly at the Bank of England (*i*).

Fractions of a penny for interest are not allowed (*k*).

Before current bills can be paid off, notice must be given in the London Gazette (*l*).

Bills defaced by accident may be renewed (*m*). With regard to the recovery or replacement of lost or destroyed bills, it is specially provided (*n*), that, on proof by oath being made before the Lord Chief Baron, or other Baron of the Court of Exchequer, that an exchequer bill has by casualty or mischance been lost, burnt or otherwise destroyed, before being paid off or discharged, and the number and amount being ascertained, and the Chief or other Baron certifying that he is satisfied with the sufficiency of the proof, the Commissioners of the Treasury are authorized to pay the bill and interest. But security

(*e*) 29 & 30 Vict. c. 25, s. 7.

(*f*) Can. Ord., March, 1861, 7 Jur., N. S. 58, Part I.

(*g*) 29 Vict. c. 25, ss. 9, 10, 11, 12.

(*h*) *Id.* s. 3.

(*i*) *Id.* s. 5.

(*k*) *Id.* s. 17.

(*l*) *Id.* s. 8.

(*m*) *Id.* s. 14. A similar provision is contained in the 48 Geo. 3, c. 1, s. 18, and in 24 Vict. c. 5, s. 12.

(*n*) *Id.* s. 16.

is to be given to repay the money, in case the bill should be afterwards produced (*n*).

Forging or counterfeiting an exchequer bill or a coupon, or an indorsement, or tendering a forged bill in payment of a debt, is felony (*o*). So is the manufacturing of paper, plates or dies in imitation of those in use for exchequer bills (*p*). Having the possession of such paper, plates or dies unlawfully is a misdemeanor (*q*). An exchequer bill or bond is the subject of larceny, as being a valuable security for the payment of money (*r*).

The 17 & 18 Vict. c. 23, and 29 Vict. c. 25, s. 30, authorize the issue of exchequer bonds for advances made by the Bank of England to her Majesty.

(*n*) 29 Vict. c. 25, s. 16.

(*o*) 29 Vict. c. 25, s. 15; 24 & 25 Vict. c. 98, s. 8.

(*p*) 29 Vict. c. 25, s. 20; 24 & 25 Vict. c. 98, s. 10.

(*q*) 29 Vict. c. 25, s. 21; 24 & 25 Vict. c. 98, s. 11.

(*r*) 24 & 25 Vict. c. 96, s. 1.

## CHAPTER XLI.

## COUPONS.

COUPONS are sometimes deposited with bankers, as securities for advances to their customers, but more frequently to collect the interest due on them. Coupons of foreign and colonial bonds, and railway debentures payable to bearer, are negotiable instruments, and pass by delivery (*a*). The fact, that the custom to pass *foreign* securities in the country where they are made by delivery is of recent origin, would not seem to make them other than negotiable instruments so long as the custom itself is established; though in the case of inland securities the custom must have existed by the law merchant (*b*). The interest, though payable half-yearly, accrues *de die in diem*, and is therefore apportionable (*c*). Being securities for money, they may be taken under a writ of execution, or attached in the hands of a third person. Colonial and foreign bonds or debentures, issued since the 3rd of June, 1862, for money raised or borrowed in this country upon their security, are subject to a stamp duty of one-eighth per cent. upon the principal amount for which the bonds are respectively given (*d*), except upon a bond not exceeding 25*l.*, when the duty is 8*d.* (*e*). Foreign or colonial bonds issued in this country, prior to this period, did not require to be stamped (*f*). Coupons

(*a*) *Gorgier v. Micville*, 3 B. & C. 45; *Price v. Great Western Railway Company*, 16 L. J., Exch. 87; *Hazelline v. Siggers*, 18 L. J., Ex. 166; *Jones v. Peppercorne*, 28 L. J., Ch. 158; *Goodwin v. Roberts*, L. R., 10 Ex. 76.

(*b*) *Crouch v. Crédit Foncier of England*, L. R., 8 Q. B. 374. See *Rumball v. Met. Bank*, 2 Q. B. D. 194.

(*c*) *In re Rogers*, 30 L. J., Chanc. 153.

(*d*) Stamp Act, 1870, and 34 Vict. c. 4, s. 2; Fisher's Stamp Acts, p. 170.

(*e*) 31 & 32 Vict. c. 124, s. 10, since the 30th July, 1868.

(*f*) *Frisari v. Clement*, 2 C. & P. 223.

are, however, free from stamp duty (*g*). The holders of consols and of India stock are enabled to convert their stock into certificates of a like amount, with coupons annexed, representing the annual dividends (*h*).

(*g*) By the Stamp Act, 1870, Sched. tit. BILL OF EXCHANGE, EXEMPTIONS, a coupon or warrant for interest attached to and issued with any security is specially exempted from duty.

(*h*) See *ante*, p. 308.

## CHAPTER XLII.

## REMITTANCES.

As regards questions respecting the transmission of money, by the intervention of bankers, from one part of England to another, many points have been noticed, arising in cases which have been referred to principally for other purposes, and will be found in parts of the work where discounts, commission, and the relations between banks in one town, and their branches, or correspondents in London, or elsewhere, are stated.

A. & Co., in America, remitted to B. & Co., in Liverpool, bills of exchange, for the purpose of taking up other bills of nearly the same amount which were maturing and payable at Liverpool. A. was a partner with B. at Liverpool, but in a totally different partnership. B. had deposited these bills with a Liverpool bank, to meet advances which the bank had made for the firm of B. & Co., and he did not appropriate the proceeds as directed by A. & Co. : it was held, that the holders of the bills, to take up which the second set had been transmitted to England, were entitled to recover as against the bank the amount of the proceeds of such bills, the bank having had notice of such intended appropriation (*a*).

A merchant purchased from the New Orleans bank a bill drawn by them upon the bank of Liverpool, and was informed by the persons representing the New Orleans bank at the time of the purchase that the Liverpool bank had, or would have, funds of the New Orleans bank sufficient and applicable to meet the bill, and appropriated for the purpose. Before the bill was presented for acceptance,

(*a*) *Thayer v. Lister*, 30 L. J., Chanc. 427.

the New Orleans bank stopped payment, and the Liverpool bank declined to accept the bill on presentation, or to pay it at maturity, on the ground that though they had in their hands sufficient funds of the New Orleans bank to meet the bill, none of such funds were specifically appropriated to the payment of it. The course of business between the two banks was for the Orleans bank to remit to the Liverpool bank bills for collection, and to draw bills against the remittances, taking care to keep them always in funds to meet the bills drawn upon them: the Court held, that there was no specific appropriation of the funds of the New Orleans bank in the hands of the bank of Liverpool to meet the bill, and that the statement made to the purchaser of the bill amounted to no more than a representation of the course of business of dealing between the two banks, and did not create any equitable lien on the funds in his favour (*b*).

Bankers at Lima established a credit agency with the general company in London, and agreed to send remittances within ninety days to cover drafts. The general company, being in difficulties, obtained an advance of money from the Peruvian Bank, to be repaid out of expected remittances from the Lima Bank to cover bills then current, and the Peruvian Bank employed as agents to receive and to select from the expected securities the managing director of the General Company and their own managing director, who had been two years previously the manager of the General Company, and was cognisant of and party to the arrangement with the Lima Bank. The securities were selected by and handed over to the Peruvian Bank upon their arrival, and the following day the General Company stopped payment and was wound up:—Held, that the Lima Bank had no title to recover the securities from the Peruvian Bank (*c*).

Where a debtor remits to his creditor a bank note or a

(*b*) *Thompson v. Simpson*, 39 L. J., Chanc. 857; L. R., 5 Ch. 659.

(*c*) *Banco de Lima v. Anglo-Peruvian Bank*, L. R., 8 Ch. D. 160; 38 L. T. 130.

bill of exchange, by a mode of conveyance directed by the creditor; or, if he transmits by the post, as being the usual mode of transmission, in the absence of orders from the creditor prescribing the mode, and the bill or note is lost or stolen, the loss falls upon the creditor (*d*).

Foreign.

*Foreign.*—With respect to the transmission of money between England and foreign countries, it may be desirable to notice some of the decisions, especially as regards the subject of the course of exchange.

A., in London, drew a bill on B., in Paris, which, having been negotiated through Amsterdam, was presented for acceptance to B., who refused to accept it, but promised that the bill should be paid at maturity. Before, however, the bill was due, the French Government prohibited the payment of any bills drawn in countries at war with France, which Great Britain was at that time, and on that account the bill was not paid by B. Under these circumstances A. was held liable to the payees, not merely for the whole value, that he originally had received for the bill, with interest, and the expenses of protesting, but for the amount of the re-exchange, by the circuitous course of Amsterdam, that being a consequence of the bill not having been paid (*e*).

When a bill drawn and indorsed in England, and payable abroad, is dishonoured by the acceptor's nonpayment, the holder is entitled as against the drawer to the amount of the re-exchange, that is, the value at the rate of exchange on the day of the dishonour of the sum expressed on the face of the bill, in the currency of the country where it is payable, with interest and expenses (*f*).

The acceptor of a bill is, in equity at least, liable for re-exchange (*g*).

(*d*) *Warwick v. Noakes*, Peake, 67.

(*e*) *Mellish v. Simeon*, 2 H. Bl. 378; and see *De Tastet v. Baring*, 11 East, 265.

(*f*) *Suse v. Pompe*, 8 C. B., N. S. 538; 30 L. J., C. P. 75.

(*g*) *In re General South American Company*, 7 Ch. D. 637; and see *Prehn v. Royal Bank of Liverpool*, L. R., 5 Ex. 32.

## CHAPTER XLIII.

## JOINT STOCK BANKS.

It now becomes necessary to state in what respects the legislature has interfered, to qualify or regulate the general law with respect to bankers, in cases where a number of persons combine or unite for the purpose of carrying on a banking establishment.

By the 39 & 40 Geo. III. c. 28, s. 15, as has been previously stated (*a*), it was forbidden to establish any corporate bank whatever, or any bank where the number of bankers in partnership should exceed six, so as "to borrow, owe, or take up any sum or sums of money, on their bills or notes, payable on demand, or at any less time than six months from the borrowing thereof," during the continuance of the privileges secured to the Bank of England, by former acts of parliament.

And again by the 7 Geo. IV. c. 46, the formation under deeds of settlement of banking copartnerships consisting of more than six persons was only permitted provided they did not carry on business within the distance of sixty-five miles from London, and had not any of their banking establishments in London. Every member was also responsible for the payment of all bills and notes issued, and for all sums of money borrowed, owed or taken up, by the copartnership. These restrictions and conditions were imposed by the first section of the act.

How these two statutes became in course of time modified by subsequent acts, and how far banks can at the present day issue notes payable on demand, has been already considered at some length (*b*). The following

(*a*) *Ante*, p. 329.

(*b*) *Ibid.*

concise summary on the law on the subject, however, as stated in Mr. Justice Lindley's *Law of Partnership* (p. 186), may be usefully cited here:—

(1) The Bank of England can alone issue in London or within three miles notes payable to bearer on demand.

(2) Beyond that limit such notes may be issued by bankers who were lawfully issuing them before May, 1844, under a licence, but by no other bankers; and not, therefore, by any banking firm of more than six persons carrying on the business of bankers within sixty-five miles of London. In other words there are three limits; (a) London and three miles round, in which the Bank of England has an exclusive monopoly; (b) the district more than three, but within sixty-five miles of London, in which the monopoly is divided between the Bank of England and banking firms of less than six members, lawfully issuing notes before May, 1844; (c) the district more than sixty-five miles from London, in which the monopoly is divided between the Bank of England and banking firms of six or more or less members, lawfully issuing notes before May, 1844.

Return of  
names of  
members and  
officers.

*Return or Account of Names of Members and Public Officers.*—Another restriction on banking partnerships is imposed by the 7 Geo. IV. c. 46, sect. 4, with respect to the returns such partnerships are bound to make:—

Before any such corporation or copartnership, exceeding the number of six persons in England, shall begin to issue any bills or notes, or borrow, owe or take up any money on their bills or notes, an account or return shall be made out, according to the form contained in the schedule marked (A.), wherein shall be set forth the true names, title or firm of such intended or existing corporation or copartnership, and also the names and places of abode of all the members of such corporation, or of all the partners concerned or engaged in such copartnership, as the same respectively shall appear on the books of such corporation or copartnership, and the name or firm of every bank or banks established or to be established by such corporation or copartnership, and also the names and

places of abode of two or more persons, being members of such corporation or copartnership, and being resident in England, who shall have been appointed public officers of such corporation or copartnership, together with the title of office or other description of every such public officer respectively, in the name of any one of whom such corporation shall sue and be sued, as hereinafter provided (c), and also the name of every town and place where any of the bills or notes of such corporation, or copartnership shall be issued by any such corporation, or by their agent or agents; and every such amount or return shall be delivered to the Commissioners of Stamps, at the Stamp Office in London, who shall cause the same to be filed and kept in the said Stamp Office, and an entry and registry thereof, to be made in a book or books, to be there kept for that purpose, by some person or persons to be appointed by the said commissioners in that behalf, and which book or books any person or persons shall from time to time have liberty to search and inspect, on payment of the sum of one shilling for every search.

This section has become immaterial in one respect, viz., as regards that part of it which makes compliance with it a condition precedent to the power of issuing notes, because, since the 19th of July, 1844, by the 7 & 8 Vict. c. 32, s. 10, no new bank can issue notes; but it is necessary to retain it in other respects, because, as to them, it is still law.

A return or an account, omitting the words *justice of the peace*, is receivable in evidence, it being proved that the person signing the verification was, in fact, a justice of the peace (d).

A certified copy of the return is evidence of the facts pertinently stated in it; it is not necessary to prove that the affidavit verifying it was made by the public registered officer of the company (e).

On the other hand, the return is not the only evidence of these facts, for they may be proved *aliunde* (f). An

(c) *I. e.*, by a public officer. See *post*, Chapter, PUBLIC OFFICER.

(d) *Bosanquet v. Woodford*, 5 Q. B. 310.

(e) *Bosanquet v. Woodford*, 5 Q. B. 310. If it purports to be signed by the "cashier" it will suffice. *Harvey v. Scott*, 11 Q. B. 92, 102.

(f) *Edwards v. Buchanan*, 3 B. & Ad. 788; *Rex v. James*, 7 C. & P. 553; *Reg. v. Carter*, 1 Den. C. C. 65.

annual general return for March, 1848, has been held admissible in evidence, to show a person to be a member on the 24th of January, 1848 (*g*).

By sect. 4, the return is made evidence, that all persons named therein, as members of the corporation or copartnership, were such at the date of the account or return. On the other hand, however, when certain proprietors of a company were sued upon a judgment against the public officer, the enumeration of proprietors in such a return, to the Inland Revenue Office, was not receivable in evidence against the plaintiff, to show that at the time they were not proprietors (*h*).

It is said to be the rule not to admit the return in evidence, unless it has been filed within the time limited by the statute (*i*).

The fact of the return having been made, is not a condition precedent to the public officer's right to sue on behalf of the company (*k*).

Annual  
return.

*Annual Return.*—The continuance of the returns is thus provided for by sect. 5:—

That such account or return shall be made out by the secretary or other person being one of the public officers appointed as aforesaid, and shall be verified by the oath of such secretary or other public officer, taken before any justice of the peace, and which oath any justice of the peace is hereby authorized and empowered to administer, and that such account or return shall, *between the 28th of February and the 25th of March in every year, after such corporation or copartnership shall be formed, be in like manner delivered by such secretary or other public officer as aforesaid, to the Commissioners of Stamps, to be filed and kept in the manner and for the purposes as hereinbefore mentioned.*

This is one of the provisions of the legislature, which it

(*g*) *Bosanquet v. Shortridge*, 4 Exch. 699.

(*h*) *Prescott v. Buffery*, 1 C. B. 41.

(*i*) 2 Taylor on Evidence, 1491, 4th edit.

(*k*) *Bonar v. Mitchell*, 5 Exch. 415; 19 L. J., Exch. 302, decided on similar provisions in the Scotch Banking Act, 7 Geo. 4, c. 67.

is usual to call *directory*; it does not seem to be obligatory to file the return within the specified period of the year (*l*).

Then sect. 6 enacts, that certified copies of such returns shall be evidence (*m*).

It is manifest, that register books, in which the names of members are inscribed, and from which the returns are to be copied, cannot be altered or varied by the directors, or the company, especially *post litem motam*, except for the purpose of a merely verbal correction (*n*).

The Board of Inland Revenue is directed, for a fee of ten shillings, to give certified copies of the returns or account, sect. 7.

An account of the names of persons appointed officers, persons ceasing to be members, of persons newly becoming members, &c., is to be made *from time to time*, as occasion requires, sect. 8.

These returns are also required to be made by banking companies carrying on business within sixty-five miles of London (*o*).

By 7 & 8 Vict. c. 32, s. 21, every banker in England and Wales must on the 1st of January in each year, or within fifteen days afterwards, make a return to the commissioners of Inland Revenue of his name, residence and occupation, and, in case of a company or copartnership, of the name, residence and occupation of every member, with other particulars.

The commissioners had also to publish such returns in certain newspapers, but by 43 & 44 Vict. c. 20, s. 57, it is enacted that commissioners shall no longer be obliged to publish in any newspaper any return made to them by any banking company which is duly registered under 6 Geo. IV. c. 42, 7 Geo. IV. c. 46, 7 Geo. IV. c. 67, and the Companies Acts or any of them.

(*l*) *Per Parke, B., Steward v. Dunn*, 12 M. & W. 663.

(*m*) See as to the form and requisites of the return, *Bosanquet v. Shortridge*, 19 L. J., Exch. 221.

(*n*) *Shortridge v. Bosanquet*, 16 Beav. 96.

(*o*) 25 & 26 Vict. c. 89, s. 205, 3rd Schedule, Part II.

*Contracts.*—Copartnerships formed under 7 Geo. IV. c. 46, not being constituted corporations, contracts which they may enter into within the scope of their business do not require to be under seal, but may be signed or executed by their manager (*p*).

*Actions and Suits.*—No more than one action or suit for the recovery of one and the same demand can be brought against these copartnerships, in case the merits have been tried in such action or suit (*q*).

The mode prescribed by 7 Geo. IV. c. 46, s. 9, for these copartnerships to sue and to be sued, is by a public officer, and being applicable to other banking companies by subsequent legislation, it will be more useful to consider the whole subject under one title (*r*).

(*p*) In *Swift v. Winterbotham* (L. R., 8 Q. B. 244, 250), Mr. Justice Quain, in delivering the considered judgment of the Court, made the following observations upon the constitution and character of one of these banking copartnerships: "It appears that the Gloucestershire Banking Company is a copartnership, formed under 7 Geo. 4, c. 46, for the purpose of carrying on the business of bankers at places more than sixty-five miles from London. The company is not a corporation, and has, therefore, no common seal. It is a copartnership created by deed or articles of copartnership for a particular purpose, with certain statutable privileges. It can sue and be sued only in the name of one of its public officers, and in all litigious business the company is represented by one of its public officers who must be a member of the company; and individual members cannot be sued in respect of transactions with the company till a judgment or decree has been first obtained against the company through one of its public officers. In *Powles v. Page* (3 C. B. 16), a company established under this act was considered a quasi-corporate body, so as not to be affected by what may have been known to any individual member.

"The act contains no provision as to the manner in which the company shall make or sign deeds, contracts, or documents of any description. It confers no authority on the public officer to bind the company, but makes him the representative of the bank only for litigious purposes; and although he must be a member of the company, he may have nothing to do with the management of its affairs. It seems obvious, therefore, from the nature of its constitution as a fluctuating and numerous body, that the company cannot affix its signature to documents otherwise than by the hand of some individual or individuals who, by the articles of copartnership, are appointed to represent the general body in such matters."

(*q*) 7 Geo. 4, c. 46, s. 10, and 1 & 2 Vict. c. 96, s. 2, made perpetual by 5 & 6 Vict. c. 85.

(*r*) See *post*, Chapter, PUBLIC OFFICER.

*Set-off between Copartnership and Members.*—With respect to this right it is enacted (s),—

That no claim or demand which any member of any such copartnership may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits or bonus, payable or apportionable in respect of such share, shall be capable of being set off, either at law or in equity, against any demand which such copartnership may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits or bonus, payable or apportionable in respect thereof.

Where a member of a banking copartnership kept an account with them as his bankers, and became bankrupt, indebted to the bank on the account, the company, being largely indebted to other persons, has a right of proof against the bankrupt in respect of the balance due to them on his account (t).

*Effect of Judgments, Decrees and Orders.*—Then there is a provision, that decrees in equity, made or obtained against the public officer, shall take effect against the company (u), and so with respect to judgments in actions (u).

The 7 Geo. IV. c. 46, s. 13, provides a mode of realizing the fruits of a judgment obtained against the public officer, in case there are no partnership assets to meet it, by an exhaustive process of execution against members, either collectively or individually. This process is by issuing a writ of scire facias, by leave of the Court in which the judgment is obtained, in order to make them parties to the judgment, and so liable to execution (x).

This mode of proceeding, however, against members,

(s) 1 & 2 Vict. c. 96, s. 4, continued by 2 & 3 Vict. c. 68, and 3 & 4 Vict. c. 111, and afterwards made perpetual by 5 & 6 Vict. c. 85, App.

(t) *Ex parte Davidson*, 2 M., D. & De G. 368.

(u) 7 Geo. 4, c. 46, ss. 11, 12.

(x) *Ransford v. Bosanquet*, 2 Q. B. 972; *Dodgson v. Scott*, 2 Exch. 469; *Bank of England v. Johnson*, 3 Exch. 598; *Barker v. Buttriss*, 7 Beav. 143.

when execution against the public officer proves to be fruitless or ineffectual, would seem to have been entirely superseded by the power given to a company, unable to meet its liabilities, or to creditors whose claims are unsatisfied, of obtaining a winding-up order under the Companies Act of 1862, and thus to stay all legal proceedings against the company or its members (*y*). The procedure by *scire facias* is therefore practically obsolete. It may be observed, that when execution issues upon a judgment against the public officer, no *scire facias* is necessary, as he is a party to the judgment and previously liable thereon (*z*). Execution cannot issue against parties after they have ceased to be members for three years (*a*). But members satisfying an execution against them are entitled to reimbursement out of the funds of the copartnership, or to contribution from the other members, as in the case of an ordinary partnership (*b*). The law applicable to the winding-up of banking copartnerships, and the liability of shareholders to contribution, will form the subject of a separate consideration.

*Registering Judgments against Members.*—If a judgment is recovered against the public officer, and it is sought to charge the real estate of a member of the copartnership at the date of the judgment, the Court of Common Pleas has no jurisdiction over the senior master, to order him to receive the memorandum, in order to register the judgment pursuant to the 1 & 2 Vict. c. 110, s. 19, and 3 & 4 Vict. c. 82, s. 2. It is entirely in his direction to receive the memorandum (*c*).

Where, however, a creditor obtained a judgment against the official manager of a banking company, and registered

(*y*) 25 & 26 Vict. c. 89, ss. 199, 201, and ss. 80, 87, 89.

(*z*) *Harwood v. Law*, 7 M. & W. 203.

(*a*) *Barker v. Buttress*, 7 Beav. 134.

(*b*) 7 Geo. 4, c. 46, s. 14.

(*c*) *Ex parte Ness*, 5 D. & L. 339; 5 C. B. 155; 2 & 3 Vict. c. 11, s. 8.

the judgment against the real estate of a former shareholder without the leave of the Court, the Irish Court of Chancery gave relief against such registration and ordered it to be removed, as being a cloud on his title to his lands (*d*). The registration of judgments or decrees in equity, in order to charge the lands of shareholders, will now be rarely resorted to, as the means of obtaining satisfaction of judgment debts will be more efficacious and expeditious under proceedings to wind up the company.

*The 7 Geo. IV. c. 46, unrepealed.*—Such are the several provisions relating to the constitution and regulation of these copartnerships; and they are still in force as to all such copartnerships which have not registered themselves under the Joint Stock Banking Companies Act of 1857 (*e*), or under the Companies Act of 1862 (*f*), or have not obtained letters patent incorporating them under the 7 & 8 Vict. c. 113.

*Joint Stock Banks under the 7 & 8 Vict. c. 113.*—Banking copartnerships could not be formed by deeds of settlement, under the 7 Geo. IV. c. 46, after the 6th of May, 1844. The 7 & 8 Vict. c. 113, which was passed in the year 1844, for regulating joint stock banks in England, prohibited the formation of banking companies consisting of more than six persons, unless by virtue of letters patent granted according to its provisions (*g*). It enabled banking companies of more than six persons, either formed or carrying on business before the 6th of May, 1844, to

(*d*) *Hone v. O'Flahertie*, 9 Ir. Chanc. Rep. 119, 497; see *Harris v. Royal British Bank*, 27 L. J., Exch. 1.

(*e*) 20 & 21 Vict. c. 49.

(*f*) 25 & 26 Vict. c. 89. The 6 Geo. 4, c. 42, as to Irish banks, is still in force.

(*g*) See *Wigan v. Fowler*, 1 St. 459; *Perring v. Dunston*, Ry. & M. 426. The 9 & 10 Vict. c. 75, repealed by 20 & 21 Vict. c. 49, s. 12, and 25 & 26 Vict. c. 89, s. 205, was a similar enactment for the regulation of joint stock banks in Ireland and Scotland.

obtain letters patent incorporating them (*h*). This act was subsequently repealed, as we shall afterwards see, but it is necessary to refer to the provisions of the act as governing the companies which may have been formed under it.

A body of persons intending to become a joint stock banking company under this act petitioned the Queen in council, according to a prescribed form (*i*); and, on the report of the Board of Trade that the statutory requirements had been complied with, a charter was granted (*k*); a deed of settlement containing certain specified provisions (*l*), which, however, have been materially altered in one respect by subsequent legislation, to be mentioned hereafter, so as to admit of the re-election of outgoing directors (*m*), was then executed by the holders of at least one-half of the shares (*l*), and the Queen by the letters patent incorporated the company (*n*), but so that the liability of the shareholders was not limited (*o*), and actions might be brought by or against the company, or shareholders, reciprocally (*p*), every judgment, decree or order of any Court of justice against the company being enforceable against the company, and against shareholders and former shareholders (*q*), and execution against the company, proving ineffectual, might be had against any shareholder, and if unproductive, then against any person who might be a shareholder at the time when the cause of action arose, with a limitation of three years after ceasing to be a shareholder (*r*); such shareholder being entitled to reimbursement out of the effects of the company, or, in default, to contributions from the other shareholders (*s*).

A creditor, obtaining a judgment against the company, may proceed by *scire facias* on the judgment against the shareholders, and is not limited to the remedy given by

(*h*) 7 & 8 Vict. c. 113, s. 45.

(*i*) *Id.* s. 2.

(*k*) *Id.* s. 3.

(*l*) *Id.* s. 4.

(*m*) See *infra*, p. 390.

(*n*) *Id.* s. 6.

(*o*) 7 & 8 Vict. c. 113, s. 7.

(*p*) *Id.* s. 8.

(*q*) *Id.* s. 9.

(*r*) *Id.* s. 10.

(*s*) *Id.* ss. 11–15.

execution (*t*). The letters patent incorporate the body for the purposes of banking, and empower it to purchase and hold lands of such annual value as expressed in the letters patent; but these are granted for a term of years, not exceeding twenty years (*u*); and the incorporation does not limit the liability of the shareholders, as before observed. Within three months after the grant of the letters patent, and before the company begins business, a memorial, setting forth the title or name of the company, the names and places of abode of all the members, and of the directors, managers and other like officers, and the names and places of every bank or banks established by the company, and the name of every town or place where the business is carried on, is to be made out (*x*),—this to be repeated every year between the 28th of February and the 25th of March, as long as they carry on business as bankers, —and delivered to the Inland Revenue Office, there to be filed, and an entry or a register made in a book is open to search for a fee of one shilling; and a printed list of the registered names and places of abode is to be made out from time to time and kept in a conspicuous place in the company's principal place of business (*y*); a like memorial is to be made out from time to time, as occasion requires, and delivered to the above office, according to a prescribed form (*z*), containing the above particulars of every new director, manager or other like officer, and the names of all persons who have become members, either in addition to or instead of any former member, and the name of every new town in which the company carries on business, and the names of all who have ceased to be members; and such further account is to be filed and registered at the stamp office (*a*); these memorials require to be signed by

(*t*) *Cleve v. Harwar*, 1 H. & N. 873. See *Morrisse v. The Royal British Bank*, 1 C. B., N. S. 67.

(*u*) 7 & 8 Vict. c. 113, s. 6.

(*x*) *Id.* Sched. A.

(*y*) *Id.* s. 16.

(*z*) *Id.* Sched. B. 1.

(*a*) *Id.* s. 17.

the manager, or one of the directors, and verified by his declaration before a magistrate (*b*), and the persons whose names appear in the then last-delivered memorial are from time to time the existing shareholders (*c*).

Certified copies of these memorials, under the hand of the commissioners of stamps and taxes, are receivable in evidence as proof of their contents (*d*), and are obtainable on the payment of a fee of ten shillings (*e*).

A shareholder, whose name is properly inserted in the last-delivered memorial, remains liable to execution, although he has subsequently bonâ fide transferred his shares, and the transfer has been duly executed by the transferee and registered (*f*). But if a shareholder dies before a judgment is obtained against the company, although his name appears in the memorial, which was existing at the time of his death, his executors could not be proceeded against by a judgment creditor (*g*).

The Courts will not interfere with the company in the performance of the duty of making these returns, as regard the form in which they are made.

The capital stock of the company can in no case be less than 100,000*l.*; the means by which it is raised, the amount paid up at the date of the petition to the Queen for the grant of letters patent, and where and how such paid-up capital is at that date invested, must be set out in such petition (*h*). Before a company commences business, one-half at least of the capital subscribed for is required to be fully paid up (*h*). But the omission to comply with this provision does not render the company illegal or relieve the shareholders from the payment of its debts or

(*b*) 7 & 8 Vict. c. 113, s. 18.

(*c*) *Id.* s. 21.

(*d*) *Id.* s. 19.

(*e*) *Id.* s. 20.

(*f*) *Fry v. Russell*, 3 C. B., N. S. 665; 27 L. J., C. P. 153. See *Dossett v. Harding*, 1 C. B., N. S. 524; *Daniell v. Royal British Bank*, 1 H. & N. 681.

(*g*) *Powis v. Butler*, 4 C. B., N. S. 469; 27 L. J., C. P. 249.

(*h*) 7 & 8 Vict. c. 113, ss. 2, 5.

liabilities (*i*). In the petition to the Queen for the grant of letters patent, the persons proposing to become a banking company set out the proposed number of shares; the shares not to be less than 100*l.* each; the actual amount of each of the shares into which the proposed capital stock is divided must also be stated (*k*). The deed of partnership must contain also specific provisions for preventing the company from purchasing any shares, or making advances of money or securities for money, to any person on the security of a share or shares in the partnership business (*l*). Subject to the regulations of the act, and to the provisions of the deed of settlement, every shareholder may sell and transfer his shares by deed duly stamped, in which the consideration is to be truly stated, such deed to be according to a given form (*m*), or to the like effect; such deed, after execution, to be delivered to the secretary of the company, to be kept by him, and a memorial thereof entered by him in the register of transfers; the entry is to be indorsed on the deed, at a fee for every such entry and indorsement, of not exceeding 2*s.* 6*d.*, payable to the company.

Until such transfer is delivered to the secretary, the buyer is not entitled to dividends, or to vote, in respect of such share (*n*).

No share can be transferred until all calls, for the time being due on it, and every other share the owner of it held is paid (*o*).

The register of transfers is to be closed by the directors for not more than fourteen days previously to each ordinary meeting; they may fix a day for the closing, of which seven days' notice is to be given in the London

(*i*) *In re London and Eastern Banking Corporation, Ex parte Longworth*, 1 De G., F. & J. 17; 29 L. J., Chanc. 55.

(*k*) 7 & 8 Vict. c. 113, s. 2.

(*l*) *Id.* s. 4.

(*m*) *Id.* Sched. C.

(*n*) *Id.* s. 23.

(*o*) *Id.* s. 24.

Gazette (*p*): any transfer made within such fourteen days is to be considered as being made subsequently to such ordinary meeting, as between the company and the transferee (*q*).

When shares come to any one by the death, bankruptcy or insolvency of a shareholder, or by the marriage of a female shareholder, or by other legal means than by the above mode of transfer, the claimant is not entitled to receive dividends, or to vote in respect of them, until such transmission of them is authenticated by a declaration in writing, stating the manner how, and to whom they pass, to be made and signed by a credible person before a magistrate (*r*).

This declaration is to be left with the secretary, who thereupon is to enter the name of the person entitled on the register book of shareholders, at a fee of not exceeding 2s. 6d., payable to the company (*s*).

Where persons are jointly entitled to shares, all notices required to be given to shareholders must be given to the person whose name stands first in the register of shareholders, which is to be notice to all of them (*t*).

When the shareholder is a minor, idiot or lunatic, the receipt for any money payable to him of the guardian, in case of a minor, of the committee, in case of an idiot or lunatic, shall be sufficient (*u*).

The company is not bound to regard trusts to which any shares may be subject (*x*).

The receipt of the person in whose name a share stands in the books of the company discharges the company, in

(*p*) In sect. 25, the words used are, "notice shall be given by advertisement in some newspaper as after mentioned," but the only newspaper mentioned subsequently is the London Gazette, sect. 38.

(*q*) 7 & 8 Vict. c. 113, s. 25.

(*r*) *Id.* s. 26. The directors may require such other form as they may think fit.

(*s*) *Id.* s. 26. The transmission of shares by will, intestacy or on marriage of a female shareholder, is provided for by sect. 27.

(*t*) *Id.* s. 28.

(*u*) *Id.* s. 29.

(*x*) *Id.* s. 30.

respect of any dividend or other sum payable in respect of such share, notwithstanding any trust attaching to the share (*x*).

The liability of shareholders is unlimited (*y*); they may be sued by, and may sue, the company (*z*), and judgment, decrees and orders against the company may be under certain circumstances enforced against them individually, whether they are members at the time the cause of action accrues, or have been members within three years (*z*).

A creditor cannot maintain an action against a shareholder for his debt, his remedy is against the company (*a*).

From time to time the directors may make such calls on the shareholders, "in respect of the amount of capital stock respectively subscribed by them," as the directors shall think fit (*b*). Whenever execution upon any judgment against the company shall have been taken out against any shareholder, the directors, within twenty-one days next after notice served upon the company of the payment of any money by such shareholder, his executors or administrators, in or toward satisfaction of such judgment, shall make such calls upon all the shareholders as will be sufficient to reimburse such shareholder, his executors or administrators, and every shareholder must pay every call to the persons at the times and places from time to time appointed by the directors (*c*).

Besides being liable to pay calls, shareholders may forfeit their shares by leaving calls unpaid, if the directors at any time after six calendar months from the day appointed for the payment of such calls declare them to be so forfeited;

(*x*) 7 & 8 Vict. c. 113, s. 30.

(*y*) *Id.* s. 7.

(*z*) *Id.* ss. 8—10. See post, pp. 392, 393, as to this liability.

(*a*) *Fell v. Burchett*, 7 El. & Bl. 537; 26 L. J., Q. B. 223.

(*b*) 7 & 8 Vict. c. 113, s. 31.

(*c*) *Id.* Interest at 5*l.* per cent. per annum on calls unpaid is recoverable under sect. 32. And sects. 33—35 provide for the enforcement and proof of calls in an action.

the shareholders still remaining liable for the calls due before the forfeiture (*d*).

But in order to authorize the sale or forfeiture of such shares, the declaration must be confirmed at some general meeting, held at least two calendar months from the day the notice of intention to declare was given (*e*).

And on payment of the arrears of calls due on such shares and the interest and expenses being made before actual sale, they revert to the original owner (*f*). The deed of partnership of every joint stock banking company under this statute, prepared according to a form approved of by the Board of Trade, in addition to any other provisions contained in it, must include specific provisions for the management of the affairs of the bank, and the election and qualification of directors (*g*).

As regards re-election of retiring directors, no deed of settlement of any company, established since the 29th of July, 1856, under the 7 & 8 Vict. c. 113, need contain any proviso for *preventing* the re-election of retiring directors, either absolutely or for any limited period; and, in every banking company, being at that date established under that act, the directors retiring at any general meeting henceforth will be eligible for re-election, (if duly qualified in other respects,) notwithstanding the proviso in the 4th section, that the deed of partnership should contain a specific proviso for the retirement of at least one-fourth of the directors yearly, and for preventing the re-election of the retiring directors, for at least twelve calendar months: this proviso having been repealed by the 19 & 20 Vict. c. 100, ss. 1, 2.

Any one of the directors is empowered to sign bills of

(*d*) 7 & 8 Vict. c. 113, s. 37. Notice of the intention to declare must be first served, sect. 38; if the address of the proprietor is not known, it must be published in London Gazette, sect. 38.

(*e*) *Id.* s. 39. Evidence of forfeiture, sect. 40. Title to such shares of buyer, sect. 40. By sect. 41, no more shares to be sold than sufficient to satisfy calls and costs.

(*f*) *Id.* s. 42.

(*g*) *Id.* s. 4.

exchange or promissory notes on behalf of the company, provided it is therein expressed to be made, accepted or indorsed by him on behalf of the company; and he is not to be liable on such bills or notes, otherwise than he would have been on any other contract, signed by him on behalf of the company (*h*). A manager, or other officer to perform the duties of a manager, must be appointed under this statute (*i*).

The duties of the manager, who is not personally liable on contracts signed by him on behalf of the company, are the following only, as limited by the statute.

Bills of exchange or promissory notes on behalf of the company may be made, accepted or indorsed, in any manner specified in the deed of partnership, provided they are signed by the manager (or one of the directors), and by him expressed to be so on behalf of the company (*k*). Services of notices, writs or other proceedings at law or in equity, or otherwise, on the manager or any director, by leaving them at the principal office of the company, or if the company has suspended or discontinued business, by serving personally the manager or director, or by leaving the same with some inmate at the usual or last abode of the manager, is good service on the company (*l*). There must be holden once at least every year, at an appointed time and place, an ordinary general meeting of the company (*m*).

Extraordinary general meetings must be held upon the requisition of nine shareholders or more, having in the whole, at least twenty-one shares (*m*). The deed of partnership must contain provisions for the yearly audit of the accounts by two or more auditors chosen at a general meeting of the shareholders, and not being directors (*m*). The deed of partnership must contain provisions for the

(*h*) 7 & 8 Vict. c. 113, s. 22.

(*i*) *Id.* s. 4.

(*k*) *Id.* s. 22.

(*l*) *Id.* s. 43.

(*m*) *Id.* s. 4.

publication once at least in every month of the assets and liabilities of the company, and for the yearly communication to every shareholder of the auditor's report, of a balance sheet, and profit and loss account (*n*).

These are the several regulations prescribed by the Act of 1844, and apply still to banks formed under its provisions, except so far as they may be affected by registration, as afterwards mentioned.

3 & 4 Will.  
IV. c. 98.

*Joint Stock Banks within Sixty-five Miles of London.*—The 3 & 4 Will. IV. c. 98, s. 3, as already shown (*n*), enabled banking companies of more than six members to carry on business within sixty-five miles from London, but they were not empowered by any Act of Parliament to sue or to be sued by a public officer. The 7 & 8 Vict. c. 113, therefore, conferred upon these companies, which were established on the 6th of May, 1844, the powers and privileges of suing and being sued in the name of a public officer, and enacted that judgments, decrees and orders might be enforced, as under the 7 Geo. IV. c. 46, with respect to banking companies carrying on business beyond sixty-five miles from London, provided they made out and delivered the several accounts required by that act (*o*). The act, however, was repealed in 1857 (*p*), but the last-mentioned provisions as to banking companies existing within sixty-five miles of London, suing and being sued, and making the returns, were re-enacted in 1862 (*q*).

20 & 21 Vict.  
c. 49.

*Registration of Joint Stock Banks.*—In 1857, the companies formed under the 7 & 8 Vict. c. 113, were required to be registered under the Joint Stock Banking Companies Act of that year (*r*); and legal proceedings commenced

(*m*) 7 & 8 Vict. c. 113, s. 4.

(*n*) Ante, p. 330.

(*o*) 7 & 8 Vict. c. 113, s. 47.

(*p*) 20 & 21 Vict. c. 49, s. 12.

(*q*) 25 & 26 Vict. c. 89, s. 205, Third Schedule, Part 2.

(*r*) 20 & 21 Vict. c. 49.

by or against a company when registered, or public officer, might be continued as if registration had not taken place, but execution was not to be issued against the effects of individual shareholders or members upon any judgment, decree or order obtained against the company (*s*); for, in the event of the property and effects of the company being insufficient to satisfy such judgment, order or decree, an order might be obtained for winding-up the company (*s*).

The procedure prescribed by the 7 & 8 Vict. c. 113, s. 9, for obtaining execution against individual members was practically abolished, and the right of contribution from all the shareholders by proceedings against the company was established and enforceable.

If these companies neglected to register before the 1st of January, 1858, they were incapacitated from suing either at law or in equity, though they might be sued, nor could any dividend be payable to their shareholders, and the directors or managers incurred a penalty of 5*l.* for every day the registration was delayed (*t*). The omission to register did not however render the company illegal (*t*). The act also enabled banking companies, which were not formed under the 7 & 8 Vict. c. 113, consisting of seven or more persons, having a capital of fixed amount and divided into shares also of fixed amount, and legally carrying on the business of banking at the time of the passing of the act, to register themselves, having first obtained the assent of a majority of their shareholders (*u*). When registered, the provisions contained in any act of parliament, letters patent, or deed of settlement, constituting or regulating these companies when inconsistent with the Joint Stock Companies Acts of 1856 and 1857, or with the act itself, were no longer to apply to them (*u*).

Registration was not to take away or affect any powers previously enjoyed by the companies of banking, issuing

(*s*) 20 & 21 Vict. c. 49, s. 10.

(*t*) *Id.* s. 5.

(*u*) *Id.* s. 6.

notes payable on demand, or of doing any other thing (*u*). A banking company constituted under the 7 Geo. IV. c. 46, became insolvent, and stopped payment, but no resolution was passed for dissolving it. It was registered under the 20 & 21 Vict. c. 49, in pursuance of a resolution come to after the stoppage of the bank. Lord Justice Turner held, that the registration was valid, for that, in order to bring a company within the 6th section of that statute, it was not necessary that it should continue to carry on business up to the time of its registration (*x*). Upon these companies being registered, the articles of Table B., prescribed by the Act of 1856, relating to shares, their transmission and forfeiture, numbered one to nineteen, were, subject to the power of alteration conferred by the Acts of 1856 and of 1857, to be deemed the regulations of these companies (*y*). The act also repealed the 7 & 8 Vict. c. 113, as to banking companies to be formed after the 17th of August, 1857 (*z*).

With respect to the formation of new companies it provided, that seven or more persons, associated for the purpose of banking, might register themselves other than as a limited company, subject to the condition that the shares into which the capital of the company was divided were not to be of a less amount than 100*l.* each; but that more than ten persons after the 17th of August, 1857, should not form themselves into a partnership for the purpose of banking, or, if so formed, carry on the business

(*u*) 20 & 21 Vict. c. 49, s. 6.

(*x*) *In re Northumberland and Durham District Banking Company*, 2 De G. & J. 357; 27 L. J., Chanc. 356. In an action by a banking company, registered under the 20 & 21 Vict. c. 49, s. 6, the Court allowed the defendant to plead a traverse of the registration of the company; that the company was carrying on business until registration; that before registration the company had stopped payment, and ceased to carry on business, and nullified corporation; but disallowed a plea, that before registration the company had lost its reserved fund, and more than one-fifth of its paid-up capital, whereby the bank had ceased to carry on legally its business. *Liverpool Borough Bank v. Mellor*, 3 H. & N. 551.

(*y*) 20 & 21 Vict. c. 49, s. 12.

(*z*) *Id.* s. 12. The section repealed the 9 & 10 Vict. c. 75, as to Irish and Scotch banking companies, and sect. 4 required them to register under the act.

of banking unless registered as a company under that act (a).

*Limited Banks.*—Before treating of limited liability banking companies, which, on account of the novelty of the principles under which they may be established, demand a separate consideration, the legislation affecting the companies mentioned in this Chapter remains to be noticed.

*Joint Stock Banks under the Companies Act, 1862.*—All banking companies which were, or were required to be, registered under the 20 & 21 Vict. c. 49, except those having the liability of their members limited by act of parliament or by letters patent, are to register under this act (b). Until registration, they cannot sue, although they may be sued, nor can they pay dividends, and the directors or managers are liable to a penalty of not less than 5*l.* per diem (c).

Upon complying with the directions of this act, as to registration, they are entitled to become an incorporated company (d), and a certificate of incorporation to which the company is entitled, will be conclusive evidence that the requisitions of the act in respect of registration have been complied with (d). The provisions contained in any act of parliament, deed of settlement, or letters patent, constituting or regulating these companies, are still to apply to them (e).

The Companies Act of 1862 repeals the 20 & 21 Vict. c. 49, but re-enacts the provision of the 12th section of

(a) 20 & 21 Vict. c. 49, s. 13.

(b) 25 & 26 Vict. c. 89, ss. 175, 176, 178, 179.

(c) *Id.* ss. 209, 210.

(d) *Id.* ss. 191, 192. The certificate of registration is conclusive evidence that all the requirements of the act relative to registration have been complied with, and the incorporation of the company cannot after the grant of the certificate be impugned, even on the ground of misconduct of the registrar in reference to the registration. *In re Burned's Banking Company*, 36 L. J., Chanc. 757.

(e) *Id.* s. 196.

that act, legalizing private banking firms of not more than ten members. Private banks may consequently consist of ten partners (*f*), or of any less number.

With respect to the formation of new companies, it expressly enacts, that no company, association or partnership consisting of more than ten persons shall be formed after the 2nd of November, 1862, for banking purposes, unless it is registered as a company under the act, or is formed in pursuance of some other act of parliament or of letters patent (*g*). It provides, however, that seven or more persons may, by subscribing their names to a memorandum of association and complying with the requisitions of the act in other respects as to registration, form an incorporated banking company with or without limited liability (*h*). Since the facilities given to form companies upon the principle of limited liability, and the popularity which such companies have now attained, it is not likely that banking companies will henceforth be established with unlimited liability. It is therefore deemed unnecessary to enter into the law applicable to their formation.

We now proceed to consider the subject of limited banking companies.

(*f*) 25 & 26 Vict. c. 89, s. 205, Third Schedule, Part 2.

(*g*) *Id.* s. 4.

(*h*) *Id.* s. 6.

## CHAPTER XLIV.

## LIMITED BANKING COMPANIES.

PRIOR to the year 1858, banking companies could not be legally formed with limited liability except by special acts of parliament (*a*), or by royal charters, or by letters patent, under the 7 Will. IV. & 1 Vict. c. 73 (*b*). In 1858, the 21 & 22 Vict. c. 91 repealed so much of 20 & 21 Vict. c. 49, as prohibited banking companies from being registered with limited liability, and first authorized the formation and registration of banking companies of seven or more persons with limited liability.

*Converting Unlimited into Limited Liability under 21 & 22 Vict. c. 91.*—The latter act also enabled existing unlimited banking companies to register themselves as limited banking companies (*c*). But banking companies claiming to issue notes in the United Kingdom were not entitled to limited liability in respect of such issue, their liability remaining unlimited (*c*). Previously to a company obtaining a certificate of registration with limited liability under this act, it was necessary to give notice to its customers, or otherwise the certificate of registration, as to them, was wholly inoperative and unavailable. Before commencing business, and also on the 1st of February and the 1st of August in each year of its operations, every banking company, registering as a limited banking company, was bound to publish, in a prescribed form, a statement of its

(*a*) The Bank of England is an instance. The liability of the stockholders is limited to the amount of their subscriptions or shares: see 5 & 6 Will. & M. c. 20, s. 26.

(*b*) Sect. 4 enables the crown to restrict by the letters-patent or charters the liability of the members to the amount of their shares.

(*c*) 20 & 21 Vict. c. 49.

liabilities and assets (*b*). In 1862, the 21 & 22 Vict. c. 91 was repealed by the Companies Act of that year (*c*); but its provisions have been substantially re-enacted by the latter act.

Companies  
Act, 1862.

*Converting into Limited Liability under Companies Act, 1862.*—By sect. 179, banking companies, consisting of seven or more members, whose liability is unlimited, may become limited banking companies by registering under the provisions of the act. Before registering as limited banking companies they must first obtain the assent of a majority of the members present or represented by proxy at a general meeting summoned for the purpose (*d*).

The following documents must also be delivered to the Registrar of Joint Stock Companies (*e*), viz.:—

1. A list showing the names, addresses and occupations of all persons who, on a day named in the list, which must not be more than six clear days before registration, were members of the company, with the addition of the shares held by each member, distinguishing each share by its specific number.

2. A copy of the deed of settlement, royal charter, letters patent or other instrument constituting or regulating the company.

3. This list and copy must be accompanied by a statement of the following particulars, viz.: The nominal capital of the company, and the number of shares into which it is divided; the number of shares taken, and the amount paid on each share; and the name of the company,

(*b*) 20 & 21 Vict. c. 49.

(*c*) 25 & 26 Vict. c. 89, s. 205, Third Schedule, First Part. By the same act it is made lawful for any number of persons, not exceeding ten, to carry on the business of banking in the same manner and upon the same condition as any company of not more than six persons could before the act (Sched. 3, Part 2).

(*d*) *Id.* s. 179. Registration of existing limited banking companies under the act, is made compulsory; and until registration they are liable to certain pecuniary penalties and subject to disabilities (sects. 209, 210).

(*e*) *Id.* s. 183.

with the addition of the word "limited," as the last word thereof.

Where the whole or a portion of the capital has been converted into stock, the company must, instead of a statement of its shares, deliver a statement to the registrar of the amount of its stock, and of the names of the persons who were holders of stock, on some day to be named in the statement, not, however, being more than six clear days before registration (*f*). The list and particulars must be verified by a statutory declaration of the directors of the company, or of two of them (*g*).

A banking company may, for the purpose of obtaining registration with limited liability, change its name by the addition of the word "limited" (*h*).

A banking company, registering as a limited banking company, must, at least thirty days previously to obtaining a certificate of registration with limited liability, give notice that it is intended so to register, to every person and partnership firm having a banking account with the company, and the notice must be given either by delivering the same to such person or firm or leaving the same or putting the same into the post, addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company (*i*).

In case the company omits to give this notice, the act provides, "that as between the company and the person or persons only who are for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which the notice is given,

(*f*) 25 & 26 Vict. c. 89, s. 185.

(*g*) *Id.* s. 186. By the Stamp Act, 1870, a statutory declaration made under the provisions of the 5 & 6 Will. 4, c. 62, requires to be stamped with a duty of 2s. 6d.

(*h*) *Id.* s. 190.

(*i*) *Id.* s. 188.

but not further or otherwise, the certificate of registration with limited liability" is to be inoperative.

Banking companies issuing notes in the United Kingdom are not entitled to limited liability in respect of such issue (*l*). These companies continue subject to unlimited liability in this respect, and, if necessary, the act provides, that the assets shall be marshalled for the benefit of the general creditors and the members liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company (*l*).

Upon these provisions being complied with, the company will become an incorporated limited banking company, having a common seal and a perpetual succession, with power to hold lands (*m*). In the case of a banking company in Scotland, it becomes, by virtue of the registration, a bank incorporated, constituted or established by or under act of parliament (*m*).

The certificate of incorporation, when obtained, will be conclusive evidence of the company having complied with the provisions of the act in respect of registration, and of being authorized to be registered as a limited company. The date of incorporation mentioned in the certificate will be considered as the date of its incorporation (*n*).

*Effect of Registration under Act of 1862.*—On registration, the provisions in the act of parliament, deed of settlement, letters patent, or other instrument constituting or regulating the company, will apply to the limited company, as well as the provisions of the Companies Act of 1862, and to the members, contributories and creditors, as if the company had been originally formed under that act (*o*).

(*l*) 25 & 26 Vict. c. 89, s. 182.

(*m*) *Id.* s. 191. The section also prescribes the fees payable on registration of unlimited banking companies. See Table of Fees, post, 406, n.

(*n*) *Id.* s. 192. But see sect. 188.

(*o*) *Id.* s. 196.

All the property of the company, its interests and rights existing at the date of its registration, pass to and vest in the incorporated company (*p*). Registration is not to affect or prejudice the liability of the company to have enforced against it, or its right to enforce, debts, obligations or contracts entered into by, to, with or on behalf of such company previously to such registration (*q*). Actions and suits and other legal proceedings pending against the company, or its members or the public officer, at the time of its registration, may be continued. Execution, however, is not to issue against the effects of an individual member upon any judgment, decree or order; but, in the event of the property and effects of the company being insufficient to satisfy these liabilities, an order may be obtained for winding up the company (*r*). The mode of winding up, and the liabilities of its members, will form the subject of a separate Chapter.

*Converting into Limited Liability under Companies Act, 1879 (s).*—This act, so far as is consistent with the tenor thereof, is construed as one with the Companies Acts, 1862, 1867, and 1877 (*t*).

By sect. 4 it is enacted that, subject to what is mentioned in the act, any company registered before or after its passing as an unlimited company may register under the Companies Acts, 1862 to 1879, as a limited company,

Act to be construed with 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.  
Registration anew of company.  
25 & 26 Vict. c. 89, 30 & 31

(*p*) 25 & 26 Vict. c. 89, s. 193.

(*q*) *Id.* s. 194. This section does not apply to the case of a pure *contributory*. And if a company originally unlimited, but subsequently limited, is wound up, members of the unlimited company cannot be made liable as contributories beyond the limit of their shares for debts contracted before the company became limited. *Aliter*, under the Act of 1856, see sect. 116. *Sheffield and Hallamshire, &c. Society, Fountain's case*, 34 L. J., Ch. 593; *Garnett Mining Company v. Sutton*, 34 L. J., Q. B. 118. *Quære*, whether they could not be made liable on the obligation attaching to the partnership at common law. *Lanyon v. Smith*, 2 N. R. 118. See Buckley, 341.

(*r*) *Id.* s. 195. See *Lanyon v. Smith*, *ante*.

(*s*) 42 & 43 Vict. c. 7.

(*t*) Sect. 3. The act does not apply to the Bank or England (sect. 2).

Vict. c. 131, or any company already registered as a limited company  
 40 & 41 Vict. may re-register under the provisions of the act.  
 c. 26, 42 & 43  
 Vict. c. 76.

The registration of an unlimited company as a limited company in pursuance of this act is not to affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Companies Act, 1862, in the case of a company registering in pursuance of that part (*u*).

25 & 26 Vict.  
 c. 89.

Reserve  
 capital of  
 company,  
 how provided.

25 & 26 Vict.  
 c. 89, 30 & 31  
 Vict. c. 131,  
 40 & 41 Vict.  
 c. 26, 42 & 43  
 Vict. c. 76.

By sect. 5, an unlimited company may, by the resolution passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up.

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up (*x*).

25 & 26 Vict.  
 c. 89, s. 182,  
 repealed, and  
 liability of

By sect. 6, section one hundred and eighty-two of the Companies Act, 1862, is repealed, and in its place it is enacted as follows:—A bank of issue registered as a

(*u*) See ante, p. 401.

(*x*) Sect. 5.

limited company, either before or after the passing of this act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

bank of issue  
unlimited in  
respect of  
notes.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company (y).

(y) The following provisions are inserted respecting the auditing of accounts of banking companies. By sect. 7 (1), Once at the least in every year the accounts of every banking company registered after the passing of the act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company: and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company: Provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such

Application  
of 25 & 26  
Vict. c. 89,  
30 & 31 Vict.  
c. 131, and  
40 & 41 Vict.  
c. 26.

25 & 26 Vict.  
c. 89, 30 & 31  
Vict. c. 131,  
40 & 41 Vict.  
c. 26, and  
42 & 43 Vict.  
c. 76.

Privileges of  
act available  
notwithstand-  
ing constitu-  
tion of com-  
pany.

By sect. 9, on the registration, in pursuance of the act, of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Companies Acts, 1862 to 1879, and as if the provisions of the acts under which the company was previously registered and regulated had been contained in different acts of parliament from those under which the company is registered as a limited company.

By sect. 10, a company authorized to register under the act may register thereunder and avail itself of the privileges conferred by this act, notwithstanding any provisions contained in any act of parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company.

*Limited Banks under the Companies Act of 1862.*—As already stated, banking firms consisting of seven or more persons may register under the act with limited liability.

branch as may have been transmitted to the head office of the banking company in the United Kingdom.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance-sheet laid before the company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance-sheet referred to in the report is a full and fair balance-sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company, and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company.

And by sect. 8 every balance-sheet submitted to the annual or other meeting of the members of every banking company registered after the passing of the act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least.

Since the 2nd of November, 1862, when the Companies Act of that year came into operation, limited banking companies can only be legally formed and registered under its provisions. It is the act at present in force on the subject (*y*).

When, therefore, it is proposed to establish a banking company in England, Ireland or Scotland, on the principle of having the liability of its members limited to the amount of their shares, or, in the words of the statute, a company limited by shares (*z*), seven persons at the least must subscribe a memorandum of association (*a*), containing the following particulars :—

1. The name of the company, with the addition of the word “limited” at the end of the name.
2. The part of the United Kingdom, whether England, Scotland or Ireland, in which the registered office of the company is situate.
3. The objects for which the company is established.
4. A declaration of the liability of the members being limited.
5. The amount of its capital divided into shares of a fixed amount.

Each subscriber cannot take less than one share, and must write his name opposite to the number of shares which he takes (*b*).

The memorandum must be stamped as a deed, and signed by each subscriber, in the presence of a witness, who must attest his execution (*b*).

A company may modify or alter the memorandum, if authorized by its regulations or by special resolution, so as to increase the capital by the issue of new shares, or to consolidate and divide the capital into shares of larger

(*y*) The Companies Act, 1879, provides for the re-registration of companies formed and registered under this act. See ante, p. 401.

(*z*) 25 & 26 Vict. c. 89, s. 8.

(*a*) *Id.* s. 6. See a form of a memorandum of association of a limited bank in Shelford's Law of Joint Stock Companies, 1st edit. p. 481.

(*b*) *Id.* ss. 8, 12.

amount than the existing shares, or to convert the paid-up shares into stock (*c*). With these exceptions, and of changing the name, as mentioned hereafter, the act provides, that no other alterations shall be made by any company in the conditions contained in the memorandum (*c*).

In the case of a limited banking company, the memorandum is usually and necessarily accompanied with articles of association prescribing and defining the constitution, business and capital of the company, the amount, allotment, transfer and forfeiture of shares, the calls, the meetings of members, the number of their votes, the appointment, qualification, remuneration, powers and duties of directors and of officers, auditing the accounts, and such other regulations as the subscribers of the memorandum may deem expedient (*d*). The company may adopt, modify or exclude all or any of the provisions of Table A. given by the Companies Act (*d*). These provisions are usually embodied in the articles. The articles must be separately paragraphed and numbered arithmetically (*d*), printed and stamped as a deed, and signed by each subscriber in the presence of a witness (*e*). The memorandum and articles must be delivered to the registrar for registration (*f*). Upon registration they bind the company

(*c*) 25 & 26 Vict. c. 89, s. 12. On this section, see the notes thereto in Buckley, p. 10; and *Irvine v. Union Bank of Australia*, 2 App. Ca. 366; 46 L. J., P. C. 87; *Ashbury v. Riche*, L. R., 7 H. L. 653; *Ander-son's case*, 7 Ch. D. 75; *Marwell's case*, L. R., 20 Eq. 585; *M'Kewan's case*, 6 Ch. D. 447. By the Companies Act, 1867, s. 9, a company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but an order of the Court is necessary for its confirmation.

(*d*) *Id.* s. 14. See a form of articles of association of a limited banking company in Shelford's Law of Joint Stock Companies, page 483, 1st edit.; and *Croskey v. Bank of Wales (Limited)*, 4 Giff. 314; and an epitome of a deed of settlement of an unlimited banking company in Wordsworth's Mining, Banking and Insurance Companies, Appendix of Forms, 202, 6th edition. See a form in the Appendix to this work.

(*e*) *Id.* s. 16.

(*f*) *Id.* ss. 16, 17. Sect. 17 prescribes, in Table B., the fees payable on registration of the memorandum and articles, viz.:—

For registration of a company whose nominal capital does	£	s.	d.
not exceed 2,000 <i>l.</i> , a fee of			2 0 0

and its members as if each member had executed these instruments as deeds (*g*). The registrar thereupon grants a certificate of the incorporation of the company by the name contained in the memorandum of association, as a banking company, limited, whose members, in the event of its being wound up, will be liable only to the amounts remaining unpaid upon their respective shares. The certificate is conclusive as to the fact of the company having complied with the requirements of the act with regard to registration (*h*).

The company may, by passing special resolutions in general meetings, from time to time, add to or alter the regulations contained in its articles, and these regulations are to be deemed of the same validity as if they had been originally in the articles of association. These regulations may be altered or modified by subsequent special resolutions (*i*).

For registration of a company whose nominal capital exceeds 2,000*l.*, the fee of 2*l.*, with the following additional fees, regulated according to the amount of nominal capital; (that is to say,)

For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 2,000, up to 5,000 <i>l.</i> .....	1	0	0
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 5,000 <i>l.</i> , up to 100,000 <i>l.</i> .....	0	5	0
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 100,000 <i>l.</i> .....	0	1	0

For registration of any increase of capital made after the first registration of the company, the same fees per 1,000*l.*, or part of 1,000*l.*, as would have been payable if such increased capital had formed part of the original capital at the time of registration.

Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.

For registration of any existing unlimited banking company, the same fee as is charged for registering a new company.

For registering any document required or authorized to be registered, other than the memorandum of association . . . . . 0 5 0

For making a record of any fact authorized or required to be recorded by the registrar, a fee of . . . . . 0 5 0

(*g*) 25 & 26 Vict. c. 89, s. 16.

(*h*) *Id.* s. 18.

(*i*) *Id.* s. 50; *Ashbury Company v. Riche*, L. R., 7 H. L. 653; 44

It would seem a power to borrow may be given by special resolution (*k*), but it is otherwise as to issuing preference shares (*l*).

A copy of the memorandum, with the articles of association, must be forwarded to every member at his request, on the payment of 1s., or a less sum, if prescribed by the regulations of the company, for the copy. If the company neglects to forward a copy, it will incur a penalty not exceeding one pound (*m*).

Name.

*Name*.—A banking company must not assume or adopt the name, or what is practically the name, of an existing company, or be registered in a name identical with the name of an existing company. If by inadvertence a company is so registered, it may, with the sanction of the registrar, change its name, and the registrar is to enter the new name on the register, and issue a certificate accordingly (*n*). Should a banking company wish to change its name after incorporation, provision is made for enabling it to do so by passing a special resolution, and obtaining the approval of the Board of Trade (*o*).

Special provisions are made for the widest possible publication of the name. The company must paint or affix, and keep painted or affixed, its name on the outside of every office or place in which it carries on business, in a conspicuous position, in letters easily legible, and must have its name engraven in legible characters on its seal, and its name mentioned in legible characters in all notices, advertisements and official publications, and in all bills of

L. J., Ex. 185; *Anderson's case*, 7 Ch. D. 75, 78; *Tensdale's case*, L. R., 9 Ch. App. 51; *Hope v. International Society*, 4 Ch. D. 327, and notes to sect. in Buckley, p. 140; *Dronfield Silkstone Coal Company*, 17 Ch. D. 76.

*k*, *Byron v. Metropolitan Saloon Omnibus Company*, 3 De G. & J. 123.

*l*, *Hutton v. Scarborough Hotel Company*, 13 W. R. 1059.

*m*, 25 & 26 Vict. c. 89, s. 19.

*n*, *Merchant Banking Company of London v. Merchant Joint Stock Bank*, W. N., 1878, 160; *Lawson v. Bank of London*, 18 C. B. 84; *Hendricks v. Montague*, 17 Ch. D. 638.

*o*, 25 & 26 Vict. c. 89, s. 13. See *Shackleford & Company v. Dangerfield*, L. R., 3 C. P. 407.

exchange, promissory notes, indorsements, cheques and orders for money, purporting to be signed by or on behalf of the company, and in all its receipts and letters of credit (*p*).

A penalty not exceeding 5*l.* will be incurred by a company for non-publication of these particulars in the mode prescribed (*q*).

A director, manager or officer, or any person on the behalf of the company, using any but its engraved seal, or issuing any notice, advertisement, or official publication, or signing, on behalf of the company, any bill of exchange, promissory note, indorsement, cheque, order for money or letter of credit, in which the name of the company is not mentioned, will incur a penalty of 50*l.* He will also be personally liable to the holder of such bill, note, cheque or order for the full amount, unless duly paid by the company (*r*).

*Registered Office.*—The company must also have a registered office of business. A company not having one will incur a penalty not exceeding 5*l.* for every day business is carried on (*s*). Notice of the situation of the registered office, as well as of any change, is to be given to the registrar, and recorded by him. Until such notice, the company will not have complied with the act (*t*).

*Capital.*—The shares of the members are personal estate, transferable according to the regulations of the company, and distinguishable by appropriate numbers (*u*). But shares of deceased members may be transferred by their personal representatives, although not themselves members (*x*). Notice of an increase of the registered capital of the com-

(*p*) 25 & 26 Vict. c. 89, s. 41.

(*q*) *Id.* s. 42.

(*r*) *Ibid.*

(*s*) *Id.* s. 39. See *British Foreign Gas Company*, 13 W. R. 649; *Fortune Mining Company*, L. R., 10 Eq. 390; 40 L. J., Ch. 43.

(*t*) *Id.* s. 40.

(*u*) *Id.* s. 22. See notes thereto in Buckley, p. 18; *Weston's case*, L. R., 6 Eq. 238; *Gilbert's case*, L. R., 5 Ch. 559; 39 L. J., Ch. 837; *Moffat v. Farquhar*, 7 Ch. D. 591; 47 L. J., Ch. 355.

(*x*) *Id.* s. 34. See *London and Provincial Telegraph Company*, L. R., 9 Eq. 653; 39 L. J., Ch. 419.

pany, whether the shares are converted into stock or not, must be given to the registrar within fifteen days after the resolution authorizing the increase (*y*). The registrar is to record the amount of the increase (*y*).

So a company that has consolidated or divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, is required to give notice thereof to the registrar (*z*). A company which neglects to give notice of increasing its capital within the time mentioned, and a director or a manager authorizing the same, will incur a penalty not exceeding 5*l.* for every day of the default (*a*). Notice of trusts, expressed, implied or constructive, cannot be entered on the register, or be receivable by the registrar (*b*).

A certificate under the seal of the company of the shares or stock held by a member will be *prima facie* evidence of his title (*c*).

#### Members.

*Members.*—The act defines the members to be subscribers of the memorandum of association, and every other person, who has agreed to become a member, and whose name is entered on the register required to be kept by the company (*d*). The articles of association generally prescribe that a written application for shares, followed by an allotment, shall be deemed an acceptance of the shares. An acceptance in this form will be binding, and a sufficient authority for placing the name of an allottee on the register. A person, who is induced to sign the articles upon a promise that is not fulfilled, or to take shares by deception, is still a shareholder, and his remedy will be against those who deceived him, and not against the company (*e*).

(*y*) 25 & 26 Vict. c. 89, s. 34.

(*z*) *Id.* s. 28.

(*a*) *Id.* s. 34.

(*b*) *Id.* s. 30. See notes to section in Buckley, p. 72.

(*c*) *Id.* s. 31.

(*d*) *Id.* s. 23; Buckley, p. 35.

(*e*) *Felgate's case*, 11 L. T., N. S. 613; 2 De G., J. & S. 456; *Challis's case*, L. R., 6 Ch. 266; 40 L. J., Ch. 431; *Bishop's case*, L. R., 7 Ch. 296; see, also, *Oakes v. Turquand*, L. R., 2 H. L. 325; and *Burgess's case*, 15 Ch. D. 513.

The liability of members as contributories will be separately considered.

*Register of Members.*—The register required to be kept Register.  
by the company must contain the following particulars (*f*),  
viz. :—

- (1.) The names and addresses and the occupations, if any, of the members of the company; a statement of the shares held by each member, distinguishing each share by its number; and the amount paid or agreed to be considered as paid on the shares of each member:
- (2.) The date at which the name of any person was entered in the register as a member:
- (3.) The date at which any person ceased to be a member.

A company, director or manager acting in contravention of these provisions will incur a penalty not exceeding 5*l.* for every day of non-compliance (*g*).

When any portion of the shares of the company has been converted into stock, the register must show the amount of stock held by each member instead of shares (*g*).

The register will be *prima facie* evidence of its contents (*h*).

*Annual List of Members.*—An annual list of all persons, who are members on the fourteenth day succeeding that on which the first of the ordinary general meetings of the company is held, must be made out, containing their names, addresses and occupations, and the number of shares held by each, and the following summary of particulars (*i*), viz. :—

- (1.) The amount of the capital of the company, and the number of shares into which it is divided:

(*f*) 25 & 26 Vict. c. 89, s. 25.

(*g*) *Id.* s. 29.

(*h*) *Id.* s. 37.

(*i*) *Id.* s. 26. See *Stringer's case*, L. R., 4 Ch. 475; *Rance's case*, L. R., 6 Ch. 104; 40 L. J., Ch. 277; *Syke's case*, L. R., 13 Eq. 255.

- (2.) The number of shares taken from the commencement of the company up to the date of the summary :
- (3.) The amount of calls made on each share :
- (4.) The total amount of calls received :
- (5.) The total amount of calls paid :
- (6.) The total amount of shares forfeited :
- (7.) The names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

This list and summary must be in a separate part of the register, and completed within seven days after the day mentioned for its being made out; and a copy forthwith forwarded to the registrar (*k*). A company neglecting to forward the list or summary will incur a penalty not exceeding 5*l.* for every day, and a director or manager permitting the same a similar penalty (*l*).

Where any of the shares of the company have been converted into stock, the list must show the amount of stock held by each member instead of the amount of his shares (*m*).

*Rectifying Register.*—In case of any errors or misstatements being introduced into the register, provision is made for their correction. If the name of any person is entered in or omitted from the register (*n*), or default is made, or unnecessary delay takes place in entering the fact of any person having ceased to be a member, the person or member aggrieved, or any other member, or the company itself, may apply to a superior Court of law or equity for an order to rectify the register. The Court may refuse the application with or without costs; or, if satisfied of its justice, may order a rectification of the register, the

(*k*) 25 & 26 Vict. c. 89, s. 26.

(*l*) *Id.* s. 27.

(*m*) *Id.* s. 29.

(*n*) *Id.* s. 35. See Buckley, 80 113.

company to pay the costs and any damages the party aggrieved may have sustained (*n*).

The Court may also decide questions relating to the title of the applicant, or arising between two or more members or alleged members (*n*). When the Court orders the register to be rectified, notice must be given to the registrar of the amendment or alteration (*o*).

*Inspection of Register.*—A register of members, commencing from the date of the registration of the company, must be kept at its registered office for inspection by the members gratis, and by other persons on the payment of 1s., or a less sum if prescribed by the company, for each inspection. A member or any other person may require a copy of the register, or of the list of members or summary of particulars on the payment of 6d. for every hundred words copied. Should an inspection or a copy be refused, the company, director or manager will incur a penalty not exceeding 2l., and an additional penalty not exceeding 2l. for every day the refusal continues (*p*).

In addition to these penalties, a judge at chambers may order an immediate inspection. The company may, by giving notice in any newspaper circulating in the district where its registered office is situate, close the register for a period not exceeding thirty days in each year (*p*).

*Issuing Promissory Notes and Bills of Exchange.*—With respect to these instruments, the act provides that they are to be deemed to have been made, accepted or indorsed on behalf of the company, if made, accepted or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted or indorsed by or on behalf or on account of the company by any person acting under the authority of the company (*q*). A bill

(*n*) 25 & 26 Vict. c. 89, s. 35. See Buckley, 80—113.

(*o*) *Id.* s. 36.

(*p*) *Id.* ss. 32, 33.

(*q*) *Id.* s. 47.

of exchange addressed to a company and signed "A. B., C. D., directors of the company," was held to bind the company, and not the directors (*r*). But where a promissory note was signed by persons describing themselves as directors of a limited company, and countersigned by the secretary of the company, as follows:—

"London, December 31, 1856.—Three months after date we jointly promise to pay Mr. Frederic Shaw or order 600*l*. for value received in stock, *on account* of the London and Birmingham Hardware Company, Limited:" it was held, that the directors who signed it were not personally liable on the note (*s*). A person advanced money for the purposes of a company in which he was a shareholder, and received a promissory note in the following form: "We, the directors of the Isle of Man Slate and Flag Company, Limited, do promise to pay to Mr. J. Dutton 1,600*l*., with interest at the rate of 6*l*. per cent. per annum until paid." It bore the seal of the company and was signed by four directors. The lender had stated that he would advance the money to the directors only, and the Court held that the directors who had signed the note were personally liable upon it (*t*).

Statement of  
assets and  
liabilities.

*Statement of Assets and Liabilities.*—As a protection to creditors and others, the act imperatively requires the publication of a statement of its capital, assets and liabilities twice a year, and a register of the company's mortgages to be kept. With respect to the statement, the act enacts, that every limited banking company shall, before it commences business, and also on the first Monday in February and first Monday in August in every year, make a statement in a form prescribed (*u*), or as near thereto

(*r*) *Okell v. Charles*, 34 L. T. 822.

(*s*) *Lindus v. Melrose*, 3 H. & N. 177; 27 L. J., Exch. 326.

(*t*) *Dutton v. Marsh*, 40 L. J., Q. B. 175. See, also, *Cortauld v. Sanders*, 15 W. R. 906; *Ex parte Agra Bank*, L. R., 9 Eq. 725.

(*u*) Form (D.), which is as follows:—

The capital of the company is —, divided into — shares of — each.

as circumstances will admit. A copy of the statement is to be put up in a conspicuous place in the registered office, and in every branch or place where the business of the company is carried on. If default is made in compliance with these provisions, the company is liable to a penalty not exceeding 5*l.* for every day of default; and a director or manager permitting the same incurs a similar penalty (*x*). Members and creditors are entitled to a copy of the statement on payment of a sum not exceeding sixpence (*x*).

*Register of Mortgages.*—All mortgages and charges *specifically* affecting property of the company must be kept in a register. A short description of the property, the amount of the charges created and the names of the mortgagees or persons entitled to the charges must be entered. If these entries are not made, every director, manager or other officer, who *knowingly* and *wilfully* (*y*) authorizes or permits the omission, will incur a penalty not exceeding 50*l.* (*z*). It would seem then the above section is directory merely, and non-registration will not invalidate the mortgage (*a*).

The number of shares issued is —.

Calls to the amount of — pounds per share have been made, under which the sum of — pounds has been received.

The liabilities of the company on the first day of January (or July) were—

Debts owing to sundry persons by the company:—

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the company on that day were:—

Government securities [*stating them*], £

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

A deposit company is also bound to make the above statement.

(*x*) 25 & 26 Vict. c. 89, s. 44.

(*y*) *Borough of Hackney Newspaper Company*, 3 Ch. D. 669.

(*z*) 25 & 26 Vict. c. 89, s. 43; *In re Borough of Hackney Newspaper Company*, 3 Ch. D. 669.

(*a*) *Ex parte Valpy*, L. R., 7 Ch. App. 289. As to their right to avail themselves thereof as against creditors, see *International Pulp Company*, *Knowles' Mortgage*, 6 Ch. D. 556; 46 L. J., Ch. 625; *Wynn Hall Coal*

A company deposited deeds with bank as collateral security for bills under discount, but the deposit was not accompanied with the formalities required by its articles of association upon making a charge or a mortgage, nor was the security registered. At the time of the winding up of the company it was indebted to the bank for a bill of exchange which had been discounted for the company, but which had been deposited with the bank to secure advances made to various persons. The securities comprised in the deeds had been realised; these remained in the bank's hands, after satisfying the bill which had been discounted for the company itself; it was decided that the deposit of the deeds constituted a valid mortgage, and that the bankers, not being officers of the company within the meaning of the Companies Act, 1862, s. 165, were not bound to see that the formalities required by the articles of association had been complied with (*b*).

Shareholders who have mortgages made to them by the company are not bound to see that they are registered (*c*). This register is to be open to the inspection of creditors and members at all reasonable times. Should an inspection be refused by any officer, director or manager, a penalty not exceeding 5*l.* is incurred, and a further penalty not exceeding 2*l.* for every day of continued refusal. A judge at chambers may order an immediate inspection of the register (*d*).

*Meetings and Minutes.*—A general meeting of the company must be held once at the least in every year (*e*).

The minutes of all resolutions and proceedings of general

*Company*, L. R., 10 Eq. 515; *Native Iron Ore Company*, 2 Ch. D. 345; *Ex parte National Bank*, *infra*; *In re South Durham Iron Company*, 11 Ch. D. 579; 48 L. J., Ch. 480.

(*b*) *Ex parte National Bank*, L. R., 14 Eq. 507; 41 L. J., Ch. 323. As to what is sufficient registration, see *Native Iron Ore Company*, 2 Ch. D. 345; 45 L. J., Ch. 517. And as to company's power to mortgage, see *Patent File Company*, L. R., 6 Ch. 83; *Bath's case*, 8 Ch. D. 334.

(*c*) *General South American Company*, 2 Ch. D. 337.

(*d*) 25 & 26 Vict. c. 89, s. 43.

(*e*) *Id.* s. 49.

meetings of the company, and of the directors or managers, must be duly entered in books provided for the purpose (*f*). These minutes, if purporting to be signed by the chairman of the meeting at which the resolutions were passed or proceedings had, or by the chairman of the next meetings, will be receivable as evidence in legal proceedings (*f*).

These minutes, when made, will be *primâ facie* evidence of the due holding of the meetings, passing of the resolutions and proceedings, the appointment of directors, and the validity of their acts, notwithstanding the discovery of any defects in their appointments or qualifications afterwards (*f*).

*Special Resolutions.*—A resolution is special when passed by a majority of not less than three-fourths of the members, entitled according to the regulations of the company to vote either in person or by proxy, at a general meeting, of which notice to propose the resolution has been given, and confirmed by a majority of such members at a subsequent general meeting, held at an interval of not less than fourteen days nor more than a month from the first meeting (*g*). Unless a poll is demanded by at least five members, a declaration of the chairman at the meeting, that the resolution has been carried, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. Notice of meetings will be deemed duly given, and the meetings duly held, whenever the notice has been given and the meetings are held in the manner prescribed by the regulations of the company. In computing the majority when a poll is demanded, reference is to be had to the number of votes to which each member is entitled by the regulations of the company (*g*).

A copy of every resolution in force must be annexed to or embodied in every copy of the articles of association

(*f*) 25 & 26 Vict. c. 89, s. 67.

(*g*) *Id.* s. 51.

issued after the passing of the resolution (*h*). A company making default will incur a penalty not exceeding 1*l.* for each copy so issued; and a director or a manager knowingly and wilfully authorizing or permitting the issue will incur a similar penalty (*h*).

*Registry of Special Resolutions.*—A copy of every special resolution must be printed, and forwarded to the registrar, in order to be recorded by him. If a copy is not forwarded within fifteen days after the confirmation of the resolution, the company will incur a penalty not exceeding 2*l.* for every day afterwards; and a director or a manager will incur a similar penalty (*i*).

Notices and  
legal pro-  
ceedings.

*Notices and Legal Proceedings.*—Notices, summonses, and other documents may be served by delivering, leaving or posting the same, in prepaid letters addressed to the company at their registered office (*k*).

A writ of summons cannot be so served upon the company or a director, but only upon the manager or secretary of the company (*l*). Proof that the notices were posted in time, properly addressed and stamped, will be sufficient (*m*).

A summons, notice or other document requiring to be authenticated by the company, may be signed by any director, secretary or other authorized officer; and it is not necessary to be under the seal of the company, and may be in writing or in print, or partly in writing and partly in print (*n*).

In actions or suits brought by the company against any member, to recover calls or moneys due from such member in his character of member, it will not be necessary to set forth the special matter, but it will be sufficient to allege

(*h*) 25 & 26 Vict. c. 89, s. 54.

(*i*) *Id.* s. 53.

(*k*) *Id.* s. 62.

(*l*) *Taene v. London and Limerick Steamship Company*, 5 C. B., N. S. 730.

(*m*) 25 & 26 Vict. c. 89, s. 63.

(*n*) *Id.* s. 64.

that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due whereby an action or suit has accrued to the company (o).

If it appears in such action, by any credible testimony, that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, a judge may require security for costs to be given by the company, and stay all proceedings until security is given (p).

The pecuniary penalties imposed by the act may be summarily recovered before justices of the peace (q).

*Examination of Affairs by Inspectors.*—An examination into the affairs of a banking company may often be desirable, in cases of rumours of losses or delinquencies of directors. The act gives power to the Board of Trade, or to members, to appoint inspectors for the purpose of reporting thereon. In the case of the Board of Trade, the application must be made by members holding not less than one-third of the entire shares of the company (r). It must be supported by such evidence as the Board of Trade may require, for the purpose of showing that the applicants have good reason for demanding the investigation, and that they are not actuated by malicious motives in instituting the inquiry. The Board of Trade may require security for costs to be given before appointing the inspectors (s).

It will be the duty of the officers of the company, on the inquiry, to furnish the inspectors with all information

(o) 25 & 26 Vict. c. 89, s. 70.

(p) *Id.* s. 69. See *Moscow Gas Company v. International Financial Society*, L. R., 7 Ch. 225; *Northampton Coal Company v. Midland Waggon Company*, 7 Ch. D. 500.

(q) *Id.* s. 65.

(r) *Id.* s. 56.

(s) *Id.* s. 57.

in their power, and to produce their books and documents, and the officers may be examined on oath (*t*).

If an officer should refuse to produce the books or documents, or to answer questions relating to the affairs of the company, he will incur a penalty of not less than 5*l.* for each offence (*t*).

Upon the conclusion of the examination the inspectors are to report their opinion, which may be either written or printed, to the Board of Trade (*u*). A copy of the report is to be forwarded by the Board of Trade to the registered office of the company, and to the members at whose instance the inspection was demanded, if they require it. These persons will have to defray the expenses of the investigation, unless the Board of Trade otherwise directs them to be paid out of the assets of the company (*u*).

In the case of a company being authorized by a special resolution, it may appoint inspectors to examine into the state of its affairs (*x*); the inspectors being clothed with the same powers and entrusted with the same duties as the inspectors appointed by the Board of Trade, with this exception, that their report is to be made in such manner and to such persons as the company in a general meeting of its members directs. Their officers will incur similar penalties by refusing to produce books or documents, or to answer questions, as under an examination conducted by the inspectors of the Board of Trade (*x*).

A copy of the report, authenticated by the seal of the company, will be admissible in legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report (*y*).

(*t*) 25 & 26 Vict. c. 89, s. 58.

(*u*) *Id.* s. 59.

(*x*) *Id.* s. 60.

(*y*) *Id.* s. 61.

## CHAPTER XLV.

## CHARTERED BANKS.

BANKS may be formed under the 7 Will. IV. & 1 Vict. 7 Will. IV. & 1 Vict. c. 73, by royal charters or letters patent. The charters are obtained by petitioning the Queen in council. The petition and draft of the proposed charter are left at the Council Office and afterwards referred to the Board of Trade. The Colonial Office and India Office are also referred to if the proposed company falls within their departments. If it is determined that a charter shall be granted, it issues under the great seal (*a*). The liability of the members is usually limited by the letters patent to the amount of their respective shares (*b*), and legal proceedings by or against the companies are directed to be taken and prosecuted in the name of a public officer appointed for the purpose (*c*). The charters are generally for limited periods, but they are renewable (*d*). Previously to an application to the Board of Trade for a charter, notices must be inserted in the Gazette and other newspapers (*e*). A bank incorporated under this act cannot be registered under the Companies Act of 1862 as an unlimited company (*f*), or, when registered as a limited company, alter any provision contained in the letters patent relating to the company, without the sanction of the Board of Trade (*g*). Of recent years it has not been the policy or the practice of the government to advise the Queen to grant charters for the establishment of banking companies in the colonies or in India, preferring to leave these matters to the free action of the Colonial or Indian governments themselves.

(*a*) Wordsworth's Joint Stock Companies, page 235, 6th edition.  
 (*b*) 7 Will. 4 & 1 Vict. c. 73.  
 (*c*) *Id.* s. 3.

(*d*) *Id.* s. 29.  
 (*e*) *Id.* s. 32.  
 (*f*) *Id.* s. 179.  
 (*g*) *Id.* s. 196.

## CHAPTER XLVI.

## IRISH AND SCOTCH BANKS.

WITH respect to Irish Banks, the 6 Geo. IV. c. 42, which is still in force as to banking copartnerships or societies established in Ireland under its provisions, enables them to sue and to be sued in the names of their public officers, and requires a return of their members to be made to the Stamp Office. That act has not repealed the Act of the Irish Parliament, 33 Geo. II. c. 14 (*a*). The Irish act does not relate exclusively to persons carrying on the business of banking in the way of banks of issue, but to all bankers in Ireland (*b*). A memorandum accompanying a deposit of deeds made as a security for a debt, and made by a person carrying on the ordinary business of a banker is within the statute, and ought to be registered to be available as against creditors under a trust deed executed pursuant to the provisions of the act (*b*). A deposit of deeds as security for a debt, accompanied by a memorandum specifying the purpose of such deposit, constitutes a conveyance under that statute, and might, and ought to, have been registered, even though the stoppage of payment by the banker took place within one month after its date (*b*).

(*a*) Contrary to the opinion of Lord St. Leonards, expressed in *O'Flaherty v. M'Dowell*, 6 H. L. Cas. 185. *Copland v. Davies*, 3 Ir. Eq. R. 31; L. R., 5 H. L. Cas. 358; 21 W. R. 1. The act is unrepealed, except as to such specific matters contained in it as have been the subject of special legislation. The previous imperial acts of parliament affecting banking institutions in Ireland are the 8 Geo. 1, c. 14; 33 Geo. 2, c. 14; 21 & 22 Geo. 3, c. 16; 40 Geo. 3, c. 22; 1 & 2 Geo. 4, c. 72; and 5 Geo. 4, c. 73. The provisions of the 1 & 2 Viet. c. 96, made perpetual by 5 & 6 Viet. c. 85, apply to banking copartnerships established in Ireland under the 6 Geo. 4, c. 42. Where judgment was obtained in Ireland against a public officer, a warrant of attorney, under 6 Geo. 4, c. 42, s. 12, to confess judgment in England for a less sum than that for which judgment was obtained in Ireland, is a nullity. *Walker v. M'Dowell*, 3 Jur., N. S. 1078. The 6 Geo. 4, c. 42, above mentioned, is similar to the 7 Geo. 4, c. 46, regulating English banking copartnerships.

(*b*) *Copland v. Davies*, L. R., 5 H. L. Cas. 358; 21 W. R. 1.

The 8 & 9 Vict. c. 37, s. 30, enables banking companies established within fifty miles of Dublin to sue and to be sued in the name of their public officer.

The 7 Geo. IV. c. 67, enabled banking copartnerships established in Scotland to sue and to be sued by public officers, and the returns of the names of their firms, members and officers are required to be made to the Stamp Office by these copartnerships. An omission to make these returns does not, however, disentitle them to sue in this country (*c*).

In 1846, the provisions of the 7 & 8 Vict. c. 113, giving the crown powers to grant letters patent of incorporation to English joint stock banks for a term of years not exceeding twenty, were extended by the 9 & 10 Vict. c. 75, to both Irish and Scotch joint stock banks.

Subsequently the 19 & 20 Vict. c. 3, further extended the provisions of the English statute in favour of Scotch joint stock banks existing before the 9th of August, 1845, by enabling the crown to grant to them letters patent of incorporation, in perpetuity, in lieu of a limited maximum of twenty years only. But by 17 & 18 Vict. c. 73, s. 1, banks formed under these acts, as to Scotland, the right of retention or lien over shares of partners was not to be affected, and banks may, by sect. 2, sell shares acquired by virtue of lien. By sect. 3, bills or notes were not to be signed in the manner prescribed by the 7 & 8 Vict. c. 113. In 1857, banks, which had been formed in Scotland or in Ireland under these statutes, were required by the 20 & 21 Vict. c. 49, to register under that act, and, in default of registration, they were subject to certain penalties and disabilities (*d*). That act also repealed the 9 & 10 Vict. c. 75, and prohibited the future formation of banking companies either in Scotland or in Ireland, except under its provisions. In 1858, limited banking companies might be formed in Scotland or in Ireland under the 21 & 22

(*c*) *Bonar v. Mitchell*, 5 Exch. 415; 19 L. J., Exch. 302.

(*d*) 20 & 21 Vict. c. 49, s. 5.

Vict. c. 91. In 1862, this act was afterwards repealed by the Companies Act, 1862 (*e*). The latter act imperatively requires banking companies, formed under the provisions of the repealed act, to register under the new act (*f*).

The issue of bank notes in Ireland is regulated by the 8 & 9 Vict. c. 37, and in Scotland by the 8 & 9 Vict. c. 38, as already mentioned (*g*).

As the provisions of the new act for the formation, regulation and registration of banking companies of limited or unlimited liability in Scotland and in Ireland are the same as in England, it will be only necessary to refer the reader to the previous Chapters on these subjects.

(*e*) 25 & 26 Vict. c. 89, s. 205, Third Schedule, First Part.

(*f*) Sects. 180, 209, 210.

(*g*) Ante, p. 326. The statute is set out in Appendix.

## CHAPTER XLVII.

## COLONIAL, INDIAN AND FOREIGN BANKS.

BANKING institutions are generally established in the colonies and in India by virtue of charters from the crown, or under the authority of local laws, corresponding in a great measure with the English laws on the subject. By an act of a colonial legislature, it was provided that a banking company should sue and be sued in the name of its chairman, and that execution on any judgment against the company might be enforced against the property of any member for the time being, in like manner as if the judgment had been obtained against such member personally. In an action against a member in this country, on a judgment obtained in the colony against the chairman, it was decided that the colonial legislature had authority to pass the act, and that there was nothing repugnant to the laws of England or to natural justice in enacting that actions on contracts made by the company in the colony, instead of being brought against the members individually, should be brought against the chairman whom they had appointed to represent them, and that a judgment recovered in such an action, after service of process on the chairman, had the same effect beyond the territorial limits of the colony which it would have had if the defendant had been personally served with process, and, he being a party to the record, the judgment had been personally against him (a).

So, by an act of the Indian legislature, a banking company established at Calcutta might be sued in the name of its secretary, and a judgment against him was to have

(a) *Bank of Australasia v. Nias*, 16 Q. B. 717; *Bank of Australasia v. Harding*, 9 C. B. 661. See *Henderson v. Henderson*, 6 Q. B. 288; *De Cossé Brissac v. Rathbone*, 6 H. & N. 301.

the same effect against the property of the bank as if recovered against all the members as parties on the record; and it was provided that, if an execution issued against the property of the bank proved ineffectual, execution should issue against the members successively, and if that were also ineffectual, then against any person who was a member at the time when the contract sued upon was entered into, but no execution was to be issued against any other person than the actual party to the suit without the leave of the court and notice given to the person to be charged: a creditor, having recovered a judgment in India against the secretary of the bank for a breach of contract entered into by the company there, took no further proceedings in India, but immediately brought an action against a member who was so at the time the contract was entered into, and recovered judgment in this country on the judgment and the contract, and it was held that he was entitled to do so, and to recover in respect of both causes of action (*b*). "It has been urged," said the Court in delivering judgment, "that, when the defendant consented to be bound by a judgment recovered, not against himself in his own name, but against another who represented him, he should be considered as having consented only on condition that proceedings on the judgment were pursued in the manner appointed by the act. But he must have known that that act would have no effect in this country. He therefore consented to be sued in the name of the public officer in India, and to be liable to all the consequences which might arise out of it in this country" (*c*).

The production of bankers' books with the entries of the items constituting the demand, kept according to the established custom of mahajuns in India, is not of itself sufficient evidence to establish such a claim, strict proof of the debt being required (*d*).

(*b*) *Kelsall v. Marshall*, 1 C. B., N. S. 241; 26 L. J., C. P. 19.

(*c*) *Id.*, 26 L. J., C. P. 23, *per* Cresswell, J.

(*d*) *Rai Sri Kishen v. Rai Hari Kishen*, 5 Moore, Ind. App. 432.

A banking company incorporated by charter, which contained a clause declaring that it should not be lawful for the company to advance money on the security of merchandise, advanced money on the faith of receiving as security a preferential lien on the wool of an ensuing clip to be shorn from the sheep of the party in whose favour the advances were made, but who was not in the actual possession of the sheep, though a part owner of the sheep and the agent of the other owners for whose benefit the advances had been made: the Privy Council held, in an action of trover by the company on such agreement giving them a preferable lien, that it was maintainable, and that the banking company was entitled to recover for the value of the wool on such preferential lien (*e*).

With regard to foreign banks, they are entitled to sue in this country by the name by which they are incorporated or known, or in the manner prescribed by the laws of the country in which they are established (*f*). Foreign banks frequently have agencies in this country for the negotiation or payment of their bills or notes.

(*e*) *Ayers v. South Australian Banking Company*, L. R., 3 P. C. 548; 40 L. J., P. C. 22.

(*f*) *National Bank of St. Charles v. De Bernales*, R. & M. 191; 1 C. & P. 569; *La Banca Nazionale Scde di Torino v. Hamburger*, 2 H. & C. 330; 11 W. R. 1074.

## CHAPTER XLVIII.

## BRANCH BANKS.

By the deed of settlement or articles of association, powers are usually reserved to the directors to establish branch banks in different parts of the country, or of the world.

A banking company was established in 1836, by a deed which provided that the business of the company should be carried on at Douglas, in the Isle of Man, and such other places as might afterwards be chosen with the consent of all the directors. In 1839, a branch bank was established at Castle Town, which continued until 1843, when an action was brought against a shareholder, who had executed the deed of 1836, to recover a sum of money deposited in it: it was held, that it might be presumed, either that the branch bank had been established in compliance with the provisions of the deed, or that the shareholder knew of, and was a consenting party to, carrying on business at the branch (*a*).

A limited banking company having branches must affix or put up in a conspicuous part of these banks a copy of the statement of its capital, assets and liabilities as required by the Companies Act, 1862, s. 44 (*b*).

The position of branch banks is that, in principle and in fact, they are agencies of one principal corporation or firm, notwithstanding that they may be regarded as distinct for special purposes, as, for instance, that of estimating the time at which notice of dishonour should be given, or of entitling a banker to refuse payment of a customer's

(*a*) *Cyrellin v. Calvert*, 11 M. & W. 11; 11 L. J., Exch. 375.

(*b*) See ante, p. 414.

cheque except at that branch where he keeps his account (*c*). The following cases will illustrate this rule. The holder of a promissory note presented it at the head office of the bankers of the makers for payment. They sent it to their branch at the place where the note was payable, where the clerk cancelled the signature, wrote "paid" on the note, and transmitted a draft in respect of it to the head office. Held, that the head office and branch were for this purpose one and the same bank, and that the act of the clerk in transmitting the draft did not operate to charge the bank with money had and received to the use of the holder (*d*). But where a bill of exchange was indorsed to a Branch Bank of the National Provincial Bank of England established at Port Madoc, who sent it to another branch established at Pwllheli, who indorsed it to the head establishment in London: it was held, in an action upon the bill by the indorsee against the drawer, that each of the branch banks was to be considered as an independent indorsee, and each entitled to notice of dishonour (*e*).

So, where there was a banking company having branches at many places, amongst others at Glastonbury and Bridgwater, and each branch had a separate manager, and kept separate accounts with its respective customers, whom each supplied with cheque books headed with the name of the place at which it respectively carried on business, and a customer, who kept an account with the Glastonbury branch, made a payment of a debt, which he owed the defendant, by giving him a cheque for the amount of it on that branch, which he presented the same day at the Bridgwater branch, where he was known and where he got cash for it, and it was sent by that branch by the first post to the former branch, and delivered to them next day, but in the meantime the customer's balance with them had been drawn out, and the cheque was accordingly refused

(*c*) *Prince v. Oriental Bank Corporation*, 3 App. Ca. 325; 47 L. J., P. C. 42.

(*d*) *Ibid*.

(*e*) *Clode v. Bayley*, 12 M. & W. 51; and *Brown v. London and North Western Railway Company*, 4 B. & S. 330, 337.

payment, and notice of dishonour given to the defendant, who was obliged to refund in an action for money had and received brought against him by the public officer of the banking company; it was held that the drawer of the cheque did not stand in the relation of customer to the Bridgwater branch, that the giving cash for the cheque did not amount to a purchase of the cheque by that branch, but only amounted to changing it, and that the cheque was not drawn on the company generally (*f*).

In the absence of any special agreement or arrangement there is no obligation on a banking company to honour the cheque of a customer presented at one of its branches where he has a balance standing to his credit, when he has overdrawn his account at another branch to an amount greater than such balance, so that the company is not in fact indebted to him upon the whole account. Neither is there any obligation on a banker to give notice to his customer, that he intends to transfer a balance against the customer from an account at one branch to an account at another branch (*g*).

Where a firm paid a cheque into a branch bank in India to their current account after the stoppage of the parent bank in England, but before the branch had any notice of the stoppage, and afterwards, on the same day, the branch received notice of the stoppage of the bank in England, and stopped itself, an application by the firm to be paid the amount of the cheque was refused; but permission was given for a renewal of the application, if the firm should find that the cheque had not been cashed until after the branch had received notice of the stoppage of the bank in England (*h*).

The subject of branch banks established by the Bank of England has already been considered (*i*).

(*f*) *Woodland v. Fear*, 7 El. & Bl. 519; 26 L. J., Q. B. 202.

(*g*) *Garnett v. M'Kewan*, 42 L. J., Exch. 1; L. R., 8 Exch. 14; ante, p. 199.

(*h*) *In re Agre and Masterman's Bank, Ex parte Waring*, 36 L. J., Chanc. 151; W. N. 1866, p. 399.

(*i*) Ante, p. 306.

## CHAPTER XLIX.

## SHARES, CALLS AND SHAREHOLDERS.

*Shares.*—The shares of the members of banking copartnerships or companies, whether formed under deeds of settlement or under articles of association, are personal property, and are generally subject to all the legal incidents which attach to personal property.

The shares of a banking copartnership, established in conformity with the 7 Geo. IV. c. 46, the property of which consisted in part of freehold and of copyhold estates, and mortgages for terms of years, have been held, both at law (*a*) and in equity (*a*), to be personalty and not realty, and to be legally bequeathable to charitable purposes, within the Mortmain Act, 9 Geo. II. c. 36. The shares or interests of members in companies formed under the Companies Act of 1862 are expressly declared to be personal estate, transferable in the manner provided by the regulations of the companies, and not real estate (*b*). The shares in all banking copartnerships are usually numbered, as they should be before being issued or allotted by limited banking companies (*b*); and the shares are represented by certificates corresponding with the numbers and amounts of the shares.

A. purchased some shares in a banking company, and had them transferred into the joint names of herself and B. B. survived A., and there was clear evidence to show that A. intended the shares for B. absolutely. By the regulations of the company, however, there was no benefit of survivorship between shareholders. It was

(*a*) *Myers v. Perigal*, 2 De G., Mac. & G. 600; 11 C. B. 90; *Ashton v. Lord Langdale*, 4 De Gex & Sm. 402.

(*b*) 25 & 26 Vict. c. 89, s. 22.

nevertheless held that the legal title was complete in B., and that she was entitled to them by survivorship (c).

*Equitable Mortgage.*—Certificates for shares may be deposited or pledged with bankers for advances (d), but notice must be given to the company to guard against the risk of losing their lien in the event of bankruptcy; shares not being choses in action within the Bankruptcy Act, 1869 (e). See further on this subject, p. 161.

*Scrip Certificate.*—As to the nature of and law respecting scrip certificate, see p. 167.

*Sale of shares. Purchase or Sale of Shares.*—By 30 Vict. c. 29, s. 1, a contract or an agreement for the sale or transfer of shares in any joint stock banking company in the United Kingdom, constituted under or regulated by the provisions of any act of parliament, royal charter or letters patent, issuing shares or stock transferable by deed or written instrument, will be null and void, unless the contract or agreement shall set forth and designate in writing such shares or stock by the respective numbers by which they are distinguished at the making of the contract or agreement on the register or books of the banking company, or where there is no such register of shares or stock by distinguishing numbers, then unless the contract or agreement shall set forth the person or persons in whose name or names such shares or stock shall at the time of making the contract stand as the registered proprietor thereof in the books of the banking company; and every person, whether principal, broker or agent, who wilfully inserts in the contract or agreement any false entry of the numbers of the shares or stock, or any name or names other than

(c) *Garrick v. Taylor*, 29 Beav. 79; 30 L. J., Chanc. 211; affirmed on appeal, 31 L. J., Chanc. 68. See *Hill's case*, L. R., 20 Eq. 585.

(d) *Ex parte Sargent*, L. R., 17 Eq. 273.

(e) *Ex parte Union Bank of Manchester*, L. R., 12 Eq. 351; 40 L. J., Bank. 57.

that of the person or persons in whose name they stand, will be guilty of a misdemeanor.

Joint stock banking companies are bound to show their lists of shareholders to any registered proprietor during business hours, from ten to four o'clock. These provisions do not apply to shares or stock of the Bank of England or of Ireland (*f*).

A contract for the sale of shares in a banking company is not a contract for the sale of "goods, wares or merchandise," within the 17th section of the Statute of Frauds, so as to require a written memorandum (*g*). But a note or memorandum of the contract for the sale or purchase of such shares, when to the amount or value of 5*l.* or upwards, requires a penny stamp (*h*). A person who is induced to become a purchaser of shares in a banking company under false or fraudulent representations made by the directors or others, as to the financial position and circumstances of the bank, may refuse to perform his contract (*i*). But if he has accepted the shares, or registered the transfer, and the bank afterwards fails, he cannot repudiate his liability as a shareholder, unless in the meantime he has avoided the contract or done that which is equivalent to avoiding it before (*i*). His remedy will be against the parties deceiving him for the recovery of the purchase-money and the calls which he has paid (*k*). When shares, however, have been fraudulently sold by a banker with whom they have been deposited for security, and a forged transfer regularly executed and registered, the owner has a right to have the shares delivered up to him by the purchaser, and

(*f*) This act is printed in the Appendix.

(*g*) *Humble v. Mitchell*, 11 A. & E. 205.

(*h*) Stamp Act, 1870, Sched., tit. Contract Note. By sect. 69 (1), the stamp may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the note is first executed. A broker cannot recover his commission unless the contract note is so stamped.

(*i*) *Ex parte Nichol*, 3 De G. & J. 387; 38 L. J., Chanc. 257; *Oakes v. Turquand*, L. R., 2 H. L. 325; *Venezuela Railway Company v. Kisch*, L. R., 2 H. L. 99; *Stone v. City and County Bank*, 3 C. P. D. 282; 47 L. J., C. P. 681. See also *Arkright v. Newbold*, 17 Ch. D. 301.

(*k*) *Scott v. Dixon*, 29 L. J., Exch. 62, n.; *Felgate's case*, 11 L. T., N. S. 613; 2 De G., J. & S. 456; *Oakes v. Turquand*, supra, and ante, p. 410.

the transfer and entry of it in the company's books cancelled (*l*).

A power of attorney to sell shares does not, without express words, give authority to pledge (*m*). By the regulations of most banking copartnerships, the consent of the directors is necessary before a shareholder can transfer his shares to a purchaser (*n*).

It follows, therefore, when such is the case, that no contract can be made between a shareholder and the intended purchaser for the sale of shares, except conditionally, that is to say, the contract must be made, either in terms or impliedly, contingent on the event of the directors consenting to the proposed transfer; also the deed of transfer must be considered to be executed provisionally; and the purchase-money can only be safely paid to the vendor after the transfer is registered (*o*).

But when the shares are bought through a stockbroker, the practice is for him to pay for the shares before that event, and he may recover the amount and stamps and commission from his employer, though the bank stops payment in the interval (*p*).

*Transfer of Shares.*—The 7 Geo. IV. c. 46 does not prescribe any form of transfer of shares. Shares in copartnerships established under the provisions of that statute are transferable only according to the particular mode pointed out by the deeds of settlement (*q*). Shares in banking companies, formed under the 7 & 8 Vict. c. 113, are

(*l*) *Johnston v. Renton*, L. R., 9 Eq. 181; 39 L. J., Chanc. 390.

(*m*) *Duncuft v. Albrecht*, 12 Sim. 199.

(*n*) *Ex parte Walton*, 26 L. J., Chanc. 545, 548. Where the consent of the directors is required it must not be improperly withheld, *Robinson v. Chartered Bank of India*, L. R., 1 Eq. 32. See *Ex parte Penney*, L. R., 8 Ch. 416. Query, who has to procure the consent, the vendor or vendee, see *Beiderman v. Stone*, L. R., 2 C. P. 504. It is the duty of the purchaser to register, *Coles v. Bristowe*, L. R., 4 Ch. 3. See *Marstead v. Paine*, L. R., 6 Ex. 132.

(*o*) *Taylor v. Stray*, 26 L. J., C. P. 185, 287.

(*p*) *Stray v. Russell*, 1 El. & Bl. 888.

(*q*) *Bosanquet v. Shortridge*, 4 Exch. 699.

transferable by a deed duly stamped, and in a given form, as already shown. Shares in banking companies, formed or registered under the 20 & 21 Vict. c. 49, or the 21 & 22 Vict. c. 91, on registration under the Companies Act of 1862, are transferable in the manner hitherto in use, or in such other manner as the companies may direct (*r*). But shares in limited banking companies, formed and registered under the Companies Act of 1862, are transferable according to the regulations prescribed by the articles of association. The form usually prescribed is a deed attested by witnesses.

*Members or Shareholders.*—Let us next inquire who are meant by members or shareholders. With respect to banking companies formed under articles of association, the Companies Act of 1862 defines members to be the subscribers of the memorandum of association and all persons who have agreed to become members and whose names are entered on the register of members (*s*). This register will be *primâ facie* evidence of membership (*t*). The register, though informal, is *primâ facie* evidence that a person whose name appears on it is a shareholder (*u*). The returns of their members which banking companies in England and Wales are required by the 8 & 9 Vict. c. 32, s. 21, to make annually to the stamp office (*x*), will be also admissible in evidence to establish the fact. The articles of association generally provide that proof shall be furnished to the satisfaction of the directors of the title of persons claiming shares on death, on bankruptcy and on marriage of females. Until this proof is produced, a transfer cannot be made or enforced. In copartnerships, established under the 7 Geo. IV. c. 46, the deeds of settlement define the persons who are or may be shareholders,

(*r*) 25 & 26 Vict. c. 89, s. 178.

(*s*) *Id.* s. 23. See the notes to this section in Buckley, pp. 35—69.

(*t*) *Id.* s. 37. See ante, pp. 410, 411.

(*u*) *Henderson v. Royal British Bank*, 26 L. J., Q. B. 112, ante, p. 411.

(*x*) See ante, p. 332.

and prescribe certain modes and forms by which they are to become so. Therefore, where the deed requires that a transferee of shares shall be approved of by a board of directors, the approval certificate, although signed by a proper proportion of directors, is insufficient, if not given at a board, and the transferor still remains a shareholder (*y*).

Where the deed of settlement of the company requires certain acts to be done by persons marrying female shareholders, and certain other acts to be done by the executors of deceased shareholders, before they can respectively become members of the company, it is necessary that they should be shown to have performed the prescribed acts (*z*).

The general principle, as established by numerous cases, is, that where the deed of settlement prescribes certain formalities for effecting a transfer of shares, yet, notwithstanding the omission of these formalities, a transfer may be held binding, provided some act is done by or on behalf of the company, by which a transferee is recognized and treated as a shareholder instead of the transferor (*a*).

But where by the deed of settlement and the charter of a banking company, it was provided that, upon a transfer of shares taking place, seven days' previous notice in writing of the proposed transfer should be given to the directors before any transfer could be made, and that, after the consent of the directors had been given, the transfer should be executed and delivered to the secretary to be registered, whereupon a new certificate, sealed with the seal of the company, was to be delivered to the transferee, and the company had departed from this form, and had allowed the practice to grow up for the secretary to deliver out a blank form of transfer without any previous notice, which was returned, after having been filled up and

(*y*) *Bosanquet v. Shortridge*, 4 Exch. 699.

(*z*) *Dodgson v. Bell*, 5 Exch. 967; *Ness v. Armstrong*, 4 Exch. 21; *Ness v. Bertram*, *id.* 196; *Ness v. Angus*, 3 Exch. 805.

(*a*) *Mayhew's case*, 5 De G., Mac. & G. 837; *Gordon's case*, 3 De G. & S. 249; *Maquire's case*, 3 De G. & S. 31; *Watson v. Eales*, 26 L. J., Chanc. 361; *Murray v. Bush*, L. R., 6 H. L. 37; 42 L. J., Ch. 586.

executed, and laid before the court of directors, and on their giving their consent to the transfer, the transfer was registered in the proper book, and the registration indorsed on the deed of transfer, and the seal affixed to the new certificate, which was delivered to the transferee, and certain shareholders had executed transfers of their shares, but the transfers had not been registered, it was considered that the practice above mentioned operated to waive the seven days' notice only, but not the consent of the directors, and that therefore these intended transferors were still shareholders (*b*).

Under the Companies Act, 1862, executors of a deceased holder, so long as the shares remain untransferred, are liable to be made contributories as executors (*c*), and are also liable as executors for calls in respect of the shares held by the deceased (*d*). Executors.

By the Companies Act, 1862, s. 24, also, it is enacted that a transfer of a deceased member's share in a company formed under that act, made by his personal representative, is to be of the same validity as if he had been a member at the time (*e*).

*Husband and Wife.*—Where a wife having separate estate contracts to take shares in her own name and on the credit of such separate estate, and there is nothing in the company's deed of settlement to exclude married women becoming shareholders, she will, on the company being wound up, be liable to be placed on the list of contributories in her own right, so as to bind her separate estate (*f*). It would seem, however, that the husband also would be liable to be put on the list, unless by the company's rules the husband is excluded from being a shareholder in Husband and wife.

(*b*) *In re Royal British Bank*, 26 L. J., Chanc. 545.

(*c*) See *Baird's case*, L. R., 5 Ch. 725.

(*d*) See *Baird's case*, *supra*; *Houldsworth v. Evans*, L. R., 3 H. L. 263. See sect. 76, Table A. (12.)

(*e*) See *London and Provincial Telegraph Company*, L. R., 9 Eq. 653.

(*f*) *In re Leeds Banking Company*, *Mathewman's case*, L. R., 3 Eq. 789. See, however, *Pugh's case*, L. R., 13 Eq. 566; 41 L. J., Ch. 580.

respect of the shares held by his wife, and the wife has, with the knowledge of the company, been accepted as shareholder without any intervention on the part of her husband (*g*). A husband may also be made liable where his wife has purchased shares, even although he was not aware of the purchase, and declined all along to sanction it (*h*).

As to a married woman's property in a joint-stock company.

By the Married Women's Property Act, 1870, s. 4 (*i*), "Any married woman, or any woman about to be married, may apply in writing to the directors or managers of any incorporated or joint-stock company that any fully paid-up shares, or any debenture or debenture stock, or any stock of such company, to the holding of which no liability is attached, and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed to be the separate property of such woman, and shall be transferred and the dividends and profits paid as if she were an unmarried woman; provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such investment and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband."

Spiritual persons.

*Spiritual Persons.*—With regard to persons who may be members of banking companies; the trade or business of banking was held to be within the 57 Geo. III. c. 99, which restrained spiritual persons from being occupied in

(*g*) See *Luard's case*, 1 D. F. & J. 533; *Ness v. Angas*, 3 Ex. 805; Buckley, p. 66; but see *In re London, Bombay and Mediterranean Bank*, 18 Ch. D. 581.

(*h*) *Scarsbrick's case* (Eur: Arb:), L. T. 137.

(*i*) 33 & 34 Vict. c. 93.

any trade or dealings; and in the case of *Hall v. Franklyn* (*j*), this disability was held to extend to banking partnerships under 7 Geo. IV. c. 96, in which two of the partners happened to be clergymen.

Contracts with banking copartnerships, however, of more than six persons were rendered valid, although there might be clergymen among the shareholders or partners, by an act (*k*) which was shortly afterwards repealed, but was substantially re-enacted by the 4 Vict. c. 14, by which clergymen may be members, partners, or shareholders in these copartnerships, but cannot be directors, or managers, or take part in person in the business. But the law remains the same with regard to the disability of clergymen being partners in private banks.

*Calls.*—The deed of settlement constituting a banking company, and the articles of association, provide for the making of calls by the directors. The particular provisions in this respect should be strictly observed, or otherwise the calls may be invalid and incapable of being enforced. It is a usual provision that shares cannot be transferred while the calls remain unpaid on the shares. Payment of a deposit on an application for shares, or an allotment, is not a call. A call cannot properly be made until shares have been allotted (*l*). A call made in pursuance of a deed of settlement of a banking company, under the 7 Geo. IV. c. 46, was held payable before the simple contract debts of a testator (*m*). And under sect. 16 of the Companies Acts money due by way of calls is to be deemed to be in the nature of a specialty debt (*n*).

(*j*) 3 M. & W. 259, 268. The 57 Geo. 3, c. 99, was repealed by 1 & 2 Vict. c. 106, s. 1; but the prohibition against clergymen trading is re-enacted by sect. 29.

(*k*) 1 Vict. c. 10.

(*l*) *Croskey v. Bank of Wales, Limited*, 4 Giff. 314; 9 Jur., N. S. 595.

(*m*) *Henderson v. Gilchrist*, 17 Jur. 570.

(*n*) 25 & 26 Vict. c. 89, s. 16. See *Buck v. Robson*, L. R., 10 Eq. 629, 631; 39 L. J., Ch. 821. Priority of specialty debts in the administration of assets of a deceased person is now abolished, see Judicature Act, 1875, s. 10.

Where the deed of settlement of a banking company defined a shareholder and member to mean the owner of a share or interest in the capital of the company, and provided that the shares should be transmissible to personal representatives, but that no executor should, as such, be a member, but that every executor might either sell his testator's shares, or constitute himself a member in respect of them by a mode pointed out by the deed, and that the directors might declare the shares forfeited, in case executors did not constitute themselves members, and the deed provided for the payment of calls by shareholders, and a transferee of shares, having covenanted in the transfer deed with the trustees of the company to perform the stipulations of the deed of settlement, died, and his executor took no step to become a member: in a suit in equity against the executor, it was held that the company was entitled to prove as creditor in respect of a call made after the death; for, that under the provisions of the deed, executors were placed in the position of holders of shares in the company, although not having all the rights which belonged to an owner of shares (*o*).

Where shares were specifically bequeathed to infants, and were transferred into the names of the executors of the will, and several years afterwards a call was made, it was held that it must be paid by the legatees, and not out of the testator's residuary estate (*p*). The question whether a specific legatee of shares or the residuary estate is liable to calls depends upon whether the calls are actually made before the shareholder's death. A testatrix bequeathed shares in a banking company; before her death three calls were authorized at stated intervals, but she died before two of the periods: it was held, under the circumstances and from the practice of the company, that the calls were not to be considered as really made, until a call letter had been

(*o*) *Heward v. Wheatley*, 3 De G., Mac. & G. 628. See *Baird's case*, L. R., 5 Ch. 725; *Houldsworth v. Evans*, L. R., 3 H. L. 263.

(*p*) *Armstrong v. Burnett*, 20 Beav. 424; 24 L. J., Chanc. 473.

sent to the shareholders, and as to those sent after her death, the specific legatee, and not the residuary legatee, must bear the calls (*q*). But it has been said, that the right principle is, that if any payments were necessary at the testator's death to constitute him a complete shareholder, they must be borne by his estate; but if he was a complete shareholder, all calls made after his death ought to be borne by the specific legatee (*r*).

A shareholder in a banking company, established under the 7 Geo. IV. c. 46, devised his real estates and appointed an executor. The dividends were paid to the executor, and the shares continued in the name of the testator. After the lapse of eleven years, the company being in course of winding up, the testator's estate, including his devised realty, was held liable for the amount of unpaid calls (*s*).

*Charging Shares.*—Shares in a banking copartnership are shares in a public company, chargeable by a judge's order, on a judgment being recovered against the proprietor of them, within the 14th section of the 1 & 2 Vict. c. 110, which empowers a judge at chambers to grant an order charging shares in public companies, whether incorporated or unincorporated, provided that no proceedings shall be taken to have the benefit of such charge, until after the expiration of six calendar months from the date of the order. The effect of the charge by the order is the same as if the judgment debtor had himself charged the shares (*t*).

3 & 4 Vict. c. 82, s. 1, enacts, that the provisions of the previous act shall be deemed to extend to the interest of any judgment debtor, "whether in possession, remainder

(*q*) *Adams v. Ferich*, 26 Beav. 384; 28 L. J., Chanc. 514.

(*r*) *Day v. Day*, 1 Drew. & Sm. 261; 29 L. J., Chanc. 466, *per* Kindersley, V.-C. See *Bevan v. Waterhead*, 3 Ch. D. 752.

(*s*) *Turquand v. Kirby*, L. R., 4 Eq. 123.

(*t*) 1 & 2 Vict. c. 110, s. 14; *per* Parke, B., *Graham v. Connell*, 19 L. J., Exch. 362.

or reversion, and whether vested or contingent”(u), as well in any such stocks or shares as aforesaid, as also in the dividends, interest, or annual produce of such stock, &c. (v).

In an action, under 1 & 2 Vict. c. 110, s. 15, for permitting the transfer of shares after notice of a charging order nisi, and before the making of it absolute, it is a good answer to show that the judgment debtor in whose name the shares stood had no beneficial interest in them (x).

A charging order when made absolute operates as from the date of the order nisi, and binds the stock charged as from that date (x).

Shares may be charged by a judge's order, under the 1 & 2 Vict. c. 110, s. 14, with a judgment debt, although the deed of settlement of the company provides, “that the shares should not be transferable, except by the consent of the directors:” and “that if any order or decree was made against any proprietor, by which his shares became charged, they should be forfeited to the company.” This appears, from a case where the company was empowered to sue and to be sued by a public officer, under the 7 & 8 Vict. c. 113, s. 47, and where the Court of Exchequer, holding it to be somewhat doubtful, whether the body was a “public company” within the meaning of the 1 & 2 Vict. c. 110, s. 14, refused to set aside the order which had been made (y). However, the same company, the Union Bank of London, has since been held by Lord Cranworth, V.-C., to be a public company, within the

(u) See *Cragg v. Taylor*, L. R., 2 Ex. 131, as to what has been held a contingent interest within this enactment, and see also *Baker v. Tynte*, 2 E. & E. 897.

(v) An order under these acts may be made by any divisional court or any judge, Jud. Acts, Ord. XLVI. r. 1, who must also for the future recognize equitable rights incidentally appearing, Jud. Act, 1873, s. 24, subs. 4.

(w) *Gill v. Continental Gas Company*, L. R., 7 Ex. 332; *Coates' case*, 35 L. T. 617.

(x) *Hale v. Barry*, L. R., 3 Ch. 452.

(y) *Graham v. Connell*, 19 L. J., Exch. 364; 1 L., M. & P. 438.

1 & 2 Vict. c. 110, s. 14 (z), and it may be considered to be clear, that shares in similarly-constituted companies are chargeable with judgment debts of the proprietors.

Hence shares in all copartnerships, formed under the 7 Geo. IV. c. 46, are chargeable; for the 7 & 8 Vict. c. 113, s. 47, which is still in force (a), directs all judgments, orders and decrees to be enforced in like manner as is provided with respect to such companies carrying on business *beyond* sixty-five miles from London, and the shares of companies carrying on business *within* sixty-five miles from London have been decided to be chargeable, it is evident the others are so also; or, in other words, all shares in these co-partnerships are chargeable. The registration of banking companies under the Companies Act of 1862, constitutes them as well public as incorporated companies, and consequently the shares of the proprietors will be chargeable under the 1 & 2 Vict. c. 110, s. 14, and 3 & 4 Vict. c. 82, s. 1 (b).

(z) *M'Intyre v. Connell*, 1 Sim., N. S. 225; 20 L. J., Chanc. 284; 15 Jur. 529; see *Nicholls v. Rosewarne*, 6 C. B., N. S. 480.

(a) 25 & 26 Vict. c. 89, s. 205, Third Schedule, 2nd Part.

(b) As to a banker's lien on shares, and as to the law relating to shares deposited with him by way of equitable mortgage, see pp. 163 *et seq.*

## CHAPTER L.

## DIRECTORS.

*Qualification.*—It is frequently prescribed in the articles of association of a company that the taking of a minimum number of shares shall be necessary to entitle a person to hold the office of director; and questions frequently arise as to how far the acceptance of such an office amounts to evidence of an agreement to take shares under section 23 of the Companies Act, 1862. The following passage, taken from Mr. Justice Lindley's book on Partnership (*a*), will help to summarize the law on this subject:—"Where," he says, "by the constitution of the company a qualification is necessary to enable a person to hold the office of director, the acceptance by a person of that office, with knowledge that a qualification for it is necessary, justifies the inference that he has agreed with the company to obtain the shares necessary to qualify him to fill the office; and if he has not obtained such shares from some other quarter, and shares necessary to qualify him have been registered in his name, he will be a contributory in respect of them, although he may not actually have applied for them, or known of their allotment to him. Moreover, a person who accepts the office of director, and acts as such, must be taken to know whether any qualification for the office is necessary or not; and such a person cannot, therefore, repudiate shares allotted to him and registered in his name in order to qualify him" (*a*). But where, on the other hand, he neither knows of the existence of any such qualification, and does not act as

(*a*) See p. 1387; *Miller's case*, 3 Ch. D. 661; *Kincard's case*, L. R., 11 Eq. 192; *Fowler's case*, 14 Eq. 316; *Harward's case*, L. R., 13 Eq. 30; 41 L. J., Ch. 283; see Buckley, p. 40. There is no presumption of law however, that a director knows the contents of the books of the company. *Hallmark's case*, 9 Ch. Div. 329.

director, or take shares, he is not as a general rule liable as a contributory (*b*).

*Powers.*—In inquiring as to the authority, powers, and liabilities of directors of a banking copartnership, it will be proper, in the first place, to premise that, in construing a deed of settlement or articles of association of one of these copartnerships or companies, the Court will, while collecting the extent of the authority intended to be conferred on the directors, construe it with reference to the nature of the business to be transacted, and the purposes contemplated, in order to judge what powers and authorities the law will imply from the nature of the office, and how far those powers and authorities are enlarged or restricted by any of the provisions of the instrument (*c*).

A company is bound by the acts of its directors, provided such acts are within the scope of their real or apparent authority. All persons dealing with banking companies must ascertain the limitations imposed by the deed of settlement, statute or articles of association, but they are not bound to draw any but direct or obvious inferences from the provisions they find there, nor is there any obligation cast upon them to see that such directors have been properly appointed, or that they have acted exactly in accordance with the manner prescribed therein (*d*). Should the person, however, have knowledge of the irregularity, the company, it need hardly be said, will not be bound (*e*).

Where the deed of settlement of a banking company expressly invested the directors with full power and autho-

(*b*) Lindley, p. 1387. *Marquis of Abercorn's case*, 4 De G., F. & J. 78; *Brown's case*, L. R., 9 Ch. 102.

(*c*) *Bank of Australasia v. Breillat*, 6 Moore, P. C. 190; 12 Jur. 189. See also, as to the general principles governing the powers of directors, *Spackman v. Evans*, L. R., 3 H. L. 171, 244.

(*d*) *Royal British Bank v. Turquand*, 5 E. & B. 240; 6 E. & B. 327; *County Life Assurance Company*, L. R., 5 Ch. 288; *Mahoney v. East Holyford Mining Company*, L. R., 7 H. L. 869; *Bank of Australasia v. Willan*, L. R., 5 P. C. 417.

(*e*) *Irvine v. Union Bank of Australia*, 2 App. Cas. 366; 46 L. J., P. C. 87.

urity to superintend, order, conduct, regulate, and manage all and singular the affairs and business of the company, to the best of their discretion and judgment, and provided that the board of directors should, and lawfully might, from time to time, devise and make such provisions, rules, orders, and regulations, touching the government, carrying on, and management of the affairs of the company, the same not being repugnant to the general rules and regulations in the deed contained, as they should think expedient, and that the concern should continue for 100 years: it was held, that the directors had the powers of managing partners in an ordinary banking partnership, amongst which was the power of borrowing money for the purpose of discharging the existing liabilities of the bank, till the assets could be realized; and of discontinuing the bank, if they thought such a step essential to the interests of the shareholders; and that their having raised a loan which they had undertaken to repay, and accompanied the engagement with other stipulations, some of which were *ultra vires*, did not discharge the bank; the only effect being, that such stipulations could not be enforced (g).

But it seems hardly necessary to point out, that directors of a banking copartnership, whether with or without the consent of the majority of the shareholders, have no authority to convert their banking company into a company for different purposes: and that money borrowed for the purpose of effecting that transmutation, with notice on the part of the lender, will not constitute a debt of the company, for the recovery of which it can be sued (h).

Nevertheless, directors may, undoubtedly, at their discretion, either discontinue altogether the business of the concern, or restrict the business to certain portions of that in which it was originally intended the bank should employ its funds, if they think such steps essential to the interests of the shareholders. Such a power seems neces-

(g) *Bank of Australasia v. Breillat*, 6 Moore, P. C. 152.

(h) 6 Moore, P. C. 197.

sarily implied in the exclusive power of management, and in the power of determining what transactions should be entered into, what notes issued, what deposits received, what bills discounted, or loans made (*i*).

The deed of settlement of a banking company provided, that when one-fourth of the capital was lost, the directors should call a meeting, and the company should be dissolved. Considerably more than one-fourth of the capital was lost, and a meeting was called, at which the shareholders resolved to continue the bank. Further losses were made, but no such meeting was called again, but as the shareholders knew that the bank was going on after more than one-fourth of the capital was lost, the directors were not liable for continuing the bank (*j*).

But, though directors may restrict, it does not seem that, even with the sanction of a majority of the members, they have the same power to extend, the business; *e. g.*, if the copartnership were constituted to carry on banking business in England, they could not extend the business to India or the colonies (*k*). In articles of association, however, ample powers are now generally reserved to directors for establishing branch banks in defined localities and extending agencies, as well as for amalgamating with other companies, and purchasing other businesses within the objects contemplated by the memorandum and articles of association (*l*). Although the directors of a banking company may be empowered by the articles of association to purchase or acquire the business of any other company, and to amalgamate with any other company carrying on business with similar objects, such amalgamation is not binding upon shareholders who do not assent to the arrangement, as neither the 161st section of the Companies Act of 1862 (*m*), nor any such provision con-

(*i*) 6 Moore, P. C. 198.

(*j*) *Turquand v. Marshall*, L. R., 4 Ch. 376.

(*k*) See 10 Hare, 54, 55, 61.

(*l*) See *Simpson v. Westminster Palace Hotel Company*, 10 H. L. Cas. 712.

(*m*) 25 & 26 Vict. c. 89.

tained in the articles of association, can have the effect of authorizing the directors to render their shareholders liable for the engagements of another company (*n*).

But in articles of association, incorporating a banking company, the directors will not be authorized in changing materially the nature of the objects of the company as proposed in their prospectus (*o*).

The following case illustrates, in some degree, the question of the nature of the business that is within the scope of banking copartnerships :—

A deed of settlement of a banking copartnership provided that the directors should not be fewer than five or more than seven; that three, or more, should constitute a board, and be competent to transact all *ordinary business*; that the directors should have power to compound for any debt owing to the company, and accede to and execute any deed of composition, or conveyance, or assignment of his estate or effects, made by any debtor of the company, whether a shareholder or not, for the benefit of his creditors, and to give time to any debtor for the payment of his debt, either upon or without security; and to abandon any debt which might seem bad or desperate.

A. had purchased of the bank a colliery, of which they were mortgagees, for a sum, of which he had paid part in cash and for the balance had accepted bills which had been renewed, and of which some were in circulation, and others overdue, in the hands of persons with whom they had been negotiated by the company. He was also largely indebted to the company on the balance of his account current. Afterwards the number of directors having become reduced to four, these four executed a deed, compounding the debt on the account current and for the

(*n*) *In re Bank of Hindustan, China and Japan, Limited*, *Higgs' case*, 13 W. R. 937; 2 H. & M. 666; *Ex parte Bagshawe*, L. R., 4 Eq. 341. See *Bank of Hindustan v. Alison*, L. R., 6 C. P. 54, 222.

(*o*) *In re Scottish and Universal Finance Bank, Limited*, *Ship's case*, 13 W. R. 450; affirmed on appeal, 2 De G., J. & S. 514. See *Downes v. Ship*, L. R., 3 H. L. 343.

remainder of the purchase-money, on payment of 1,000*l.* by A., and his agreeing to abandon the colliery to the bank; the directors also covenanted "on behalf of the company, so far as they could lawfully bind the company, but not further or otherwise," to indemnify A. against all such bills of exchange as had passed through the company's hands.

A. brought an action for not indemnifying him, when it was held that the covenant did not bind the copartnership; for that this was not *ordinary business*; and no smaller number than five directors were competent to transact it; and it was made a question whether a board of three directors could transact even ordinary business, unless it was a board of three out of five directors (*p*).

*Contracts under Companies Act.*—Banking companies incorporated under the Act of 1862, whether as limited or as unlimited companies, were legally bound only by contracts made by deed under their common seal (*q*). But since the Companies Act, 1867 (*r*), s. 37, (1), any contract which, if made between private parties, would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company, and such contract may be in the same manner varied or discharged; (2), any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may be varied or discharged; (3), any contract which, if made between private parties, would by law be valid, although made by parol only, and not reduced into writing, may be made by

(*p*) *Kirk v. Bell*, 16 Q. B. 290. See also *Mahoney v. East Holyford Mining Company*, L. R., 7 H. L. 869; 33 L. T. 383.

(*q*) *McArdly v. Irish Iodine Company*, 15 Ir. C. L. Rep. 146.

(*r*) 30 & 31 Vict. c. 131; *Swift v. Winterbotham*, L. R., 8 Q. B. at p. 251; *Beer v. London and Paris Hotel Company*, L. R., 20 Eq. 412.

parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may, in the same way, be varied or discharged. And all contracts made according to the above provisions will be effectual in law, and be binding upon the company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be.

Bills and  
notes drawn  
by directors.

*Bills and Notes.*—Bills and notes drawn by directors on behalf of a company should appear on the face of them to be drawn on its behalf, for if there is nothing on the note or bill itself to exclude their personal liability they will be held liable. The fact that the company's seal has been affixed is not sufficient to exclude their personal liability (s).

By the Companies Act, 1862 (t), s. 42, directors of a limited company are liable to a penalty of 50*l.*, if they sign or authorize to be signed on behalf of such company bills of exchange, promissory notes, &c., wherein its name is not mentioned as in the manner prescribed in the act.

Register of Mortgages, s. 43.—Bankers do not stand in the position of officers of a company for the purposes mentioned in this section (u).

Negligence.

*Negligence.*—In order to make directors personally liable for imprudence in the exercise of powers conferred upon them, it must appear that such imprudence was so great as to amount to *crassa negligentia* (x).

Fraud.

*Fraud.*—Directors of a company, like other agents, will be compelled to make good the truth of their representations, if they induce persons to deal with them by means of

(s) *Dutton v. Marsh*, L. R., 6 Q. B. 361.

(t) 25 & 26 Vict. c. 89, s. 42, ante, p. 409.

(u) *Ex parte National Bank*, L. R., 14 Eq. 507, 515. See ante, pp. 415, 416.

(x) *Overend, Gurney & Co. v. Gibb*, L. R., 5 H. L. 480.

untrue representations as to matters *of fact*. This rule, however, does not apply to representations as to matters of law (*y*). A director of a company is not liable for fraud (such as the issue of a fraudulent prospectus), committed by his co-directors, or by any other agent of the company, unless he has either expressly authorized or tacitly permitted its commission (*z*).

*Notice affecting Company.*—The operation of the acts of parliament, relating to copartnerships established under the 7 Geo. IV. c. 46, is such as to render them *quasi* corporations to this extent, that notice to one of the members, or even to one of the directors, provided he has, by the constitution of the company, no share or control in the management of the accounts of the company, is not notice to the company (*a*). So knowledge of a particular fact relating to the accounts by one director of a banking company, is not notice to the company, where that director has no voice in the management of the accounts, and the money transactions of the company are conducted exclusively by a manager under three directors, of whom the director possessing the knowledge is not one (*b*). But where one of the directors is clad with authority to act on behalf of the company, notice of matters coming within the scope of that authority is notice to the company (*c*).

*Appropriating Shares.*—A transaction entered into by directors, as the appropriation to themselves of shares, may be incapable of being sustained (having regard to the

(*y*) *Beattie v. Lord Ebury*, L. R., 7 Ch. 777; 41 L. J., Chanc. 804; 27 L. T. 398; *Peck v. Gurney*, L. R., 6 H. L. 377; 43 L. J., Chanc. 19; 22 W. R. 29. As to what amounts to fraudulent knowledge, see *Weir v. Bell*, 3 Ex. D. 32, 238; 47 L. J., Exch. 704.

(*z*) *Cargill v. Bower*, 10 Ch. D. 502; 47 L. J., Chanc. 649; 26 W. R. 716; *Weir v. Bell*, *supra*.

(*a*) *Powells v. Page*, 3 C. B. 25; 15 L. J., C. P. 217.

(*b*) *In re Carew*, 31 Beav. 39.

(*c*) *British and American Telegraph Company v. Albion Bank*, L. R., 7 Ex. 119; 41 L. J., Exch. 67; *Ex parte Agra Bank*, L. R., 3 Ch. 555.

provisions of the deed of settlement or the principles of equity governing the administration of trusts) as a transaction binding on the company, unless brought before the shareholders and confirmed by them; yet, nevertheless, the directors by the transaction, although not confirmed and notwithstanding the irregular nature of it, may be bound as between themselves and the company.

Thus, a director in a banking copartnership had regularly, before 1840, become owner of twenty shares, which number of shares each director was by the deed of settlement obliged to hold, as a qualification for the office. The deed of settlement provided, that the shares of the company should be vested in the court of directors, who should have full power to allot, *appropriate*, reserve for, or dispose of the same, to such parties, and upon such terms, and in such manner, as they might think fit: and that the executor of any proprietor should not, as such, be a proprietor in respect of such shares, but he should be at liberty to dispose of them; or the company might, upon an executor giving notice, and complying with the provisions of the deed, permit him to become the proprietor, and personally chargeable.

The directors, on the 7th of August, 1840, resolved, without the privity of the shareholders, to appropriate to themselves a certain amount of additional shares—or, as they called them, “credit shares”—for which they were severally to pay, by giving their promissory notes, payable to the trustees of the bank, for the amount for which each subscribed.

A director agreed to take (and he gave a promissory note in payment for) one hundred of these shares; he also signed a letter binding himself to pay the deposit and calls on them, but did not execute the deed of settlement in respect of them. He died in 1848, eight years after the giving the promissory note, never having paid any interest on, or any part of the principal of, the promissory note; in the books of the company, however, credit was given to

him in respect of dividends on the credit shares, and he was charged with interest on the promissory note.

His executor was held to be rightly placed on the list of contributories, not only in respect of the twenty shares, but also in respect of the one hundred "credit shares," although the creation of the "credit shares" was not warranted by the deed, nor were they, in fact, ever issued or allotted.

The directors, it was said, "clearly were not entitled to allot to themselves a very large proportion of the capital of the company without bringing in a single shilling in aid of that capital, only giving promissory notes, payable at some distant period, debiting themselves with interest, as it became payable on their several notes, and taking credit for the dividends to which they would properly have been entitled if they had actually made the payments" (*d*).

In another case, which arose under the same deed of settlement, a director was regularly owner of twenty shares; he, subsequently, in pursuance of the resolution of the court of directors, took five hundred of the credit shares and gave his promissory note, payable in five years, for the amount; he also signed a letter binding himself to pay the deposit and the calls, but did not execute the deed of settlement in respect of the five hundred shares. Three months after this he died. Within one month of his death his executors applied to the directors to ascertain the extent of his interest in, or liability to, the company. In answer they were informed, on behalf of the directors, that their testator held twenty shares. These were, thereupon, duly transferred to a purchaser, and the directors afterwards cancelled the five hundred shares, and the pro-

(*d*) *Ex parte Robinson*, 2 De G., Mac. & G. 517, 520. For cases where persons have been put on the list of contributories, notwithstanding that certain formalities rendered necessary by the deed of settlement or articles of association have not been complied with, see *Bush's case*, L. R., 6 Ch. 246; *Murray v. Bush*, L. R., 6 H. L. 37; 42 L. J., Ch. 586; *Keene's Executors' case*, 3 De G., M. & G. 272.

missory note for the amount. Eight years after the death of the testator, it was held that the executors ought not to be placed upon the list of contributories, for, although his estate might have been bound, if the claim had been promptly asserted at the instance of the shareholders, yet, that so long after the distribution of his assets, the loss arising from the misrepresentation of the directors must fall upon themselves and the company and not upon the estate (*e*).

The same deed of settlement further provided and required that the capital of the company should be one million sterling, divided into 20,000 shares of 50*l.* each, and that the proprietor of each share should bring in and pay to the company the full sum of 50*l.* in respect of such share, as and when called upon so to do, in manner thereinafter (*i. e.* in the deed of settlement) provided. The Court, therefore, gathered the intention of the parties to the deed to be "that all the shares should be actually *bonâ fide* subscribed for as upon money payments, depending no doubt upon the periods when the directors should think it right to make calls (*f*).

The clause, that the directors were to appropriate or reserve shares, the Court thought might be considered, perhaps, as giving power to the directors "to appropriate or reserve," not in terms, but in substance, *for themselves and their friends*, the whole of the shares; the words are, "to such parties, and upon such terms as they shall think fit," which rather looked as if they were to deal with third parties; but, whoever might take them, the shares could only be taken subject to a general liability to pay for them as a money transaction, although the payment was to be deferred, in the shape of calls, till wanted (*g*).

The whole amount of the "credit shares" taken by the directors formed an enormous sum in the aggregate, and a

(*e*) *Meux's case*, 2 De G., Mac. & G. 522.

(*f*) 2 De G., Mac. & G. 529.

(*g*) *Ibid.*

very large proportion of the entire capital mentioned in the deed of settlement.

Notwithstanding, however, that the deed conferred such large powers, the Court treated the conduct of the directors as a fraud upon the general body of the shareholders: for the directors were aware, that without the aid of the fictitious capital represented by these "credit shares," there was no other way, in which it was possible for the concern to have gone on (*h*).

If, for instance, at the first meeting of the shareholders, the directors had only represented the capital which was actually paid up, this company, it is clear, must have stopped at once, and, in that case, the directors would have lost all their power and fancied benefit.

When, therefore, shareholders execute deeds of settlement, or articles of association, giving "full power to the court of directors to allot, appropriate, reserve for, or dispose of the shares to, such parties, and upon such terms, and in such manner as they may think fit;" the measure is one which the shareholders ought to be fully impressed with the importance of, conferring, as it seems to do, so vast a power upon the body of directors.

*Purchase of Shares.*—Unless the memorandum and articles of association contain in plain terms an express power to purchase their own shares, the purchase is *ultra vires*, although the company may be empowered to deal in shares of joint stock companies generally; and therefore, when the broker of the banking company, acting under the instructions of the directors, bought shares in the company on behalf of the company, and was credited with the price paid by him for the shares in his banking account kept with the company, on the company being wound up the broker was not entitled to prove against the company for so much of the balance due to him as represented the price of the shares (*i*).

(*h*) 2 De G., Mac. & G. 529.

(*i*) *In re London, Hamburg and Continental Exchange*, L. R., 5 Ch. 444:

If a sale of shares by members of a company to the directors on behalf of the company is sanctioned by a majority at a general meeting, even assuming the transaction to be *ultra vires* or improper, an acquiescence of six years on the part of the dissentient shareholders will preclude them from impeaching it (i).

Approval of  
transfer of  
shares.

*Approval of Transfer of Shares.*—The distinction between a banking copartnership and an ordinary trading partnership consists in the power and privilege which, by the provisions of the deed of settlement of the former, are given to a proprietor to retire and withdraw his capital from the concern, without a dissolution of the partnership, by transferring his shares. This power and privilege constitute very many inducements to the investment of capital in such concerns, and thereby enable the society, or partnership, to raise a capital and carry on transactions which it would be impracticable to raise, or carry on, upon the basis of an ordinary mercantile partnership. The consequences which, as between a shareholder and the company, arise, by operation of law alone, upon a transfer of shares cannot, therefore, be inferred, from those which attach upon the dissolution of an ordinary partnership. The consequences arising upon a transfer of shares must be sought for in the provisions of the deed of settlement, or articles of association, or in some rule of law not repugnant to those provisions.

As directors cannot sell their right, given by the deed of settlement, of objecting, on behalf of the company, to any proposed transfer of shares, so they cannot exercise the right of giving their sanction to such proposed transfer,

*Land Credit Company of Ireland v. Fermoy*, L. R., 8 Eq. 7; 5 Ch. 763; *Ex parte Credit Foncier*, L. R., 7 Ch. 164; *Hope v. International Financial Society*, 4 Ch. D. 727; *Snell's case*, L. R., 5 Ch. 22; *In re Dronfield Silkstone Coal Company*, 17 Ch. D. 76.

(i) *Gregory v. Patchett*, 10 Jur., N. S. 1118. See as to acquiescence, *Phosphate of Lime Company v. Green*, L. R., 7 C. P. 43; *Irvine v. Union Bank of Australia*, 2 App. Cas. 366; 46 L. J., P. C. 87; *In re Dronfield Silkstone Coal Company*, *supra*.

for the purpose, and upon the condition, of obtaining payment of a debt already due to the company from the intended transferor of the shares (*k*).

Where articles of association prescribe that the company may decline to register any transfer of shares whilst a shareholder is indebted to the company, or unless the transferee is approved of by the directors, the directors are not warranted in arbitrarily refusing to register the transfer, if the shareholder is not in point of fact indebted to the company (*l*).

A power in the articles of association of a bank to decline to register any transfer of shares unless the transfer is approved of is not to be arbitrarily exercised. The board in such case is to exercise its discretion in a reasonable manner (*l*).

A deed of settlement of a banking copartnership declared, that no transfer of shares should be permitted, except upon notice to the directors, and, on the consent of a board of directors, such consent being signified by a certificate in writing signed by three directors, at the least; if such consent were refused, the shareholder might require the directors to buy his shares at the market price of the day. After a consent given, the name of the transferee was entered in the share register book, and the entry there was conclusive against him.

A shareholder proceeded to transfer his shares to different persons, and sent the proper notices to the directors; received back consents signed by three directors; and completed the transfers; the transferees' names were entered in the share register book; and, in the return made to the Inland Revenue, his name was omitted from the list of shareholders, and inserted in the list of those

(*k*) *Pinkett v. Wright*, 2 Hare, 120.

(*l*) *Slee v. International Bank*, 17 L. T., N. S. 425; *Stranton Iron Company*, L. R., 16 Eq. 559; *Ex parte Penny*, L. R., 8 Ch. 446; *Moffat v. Farquhar*, 7 Ch. D. 591; 47 L. J., Ch. 355; *Poole v. Middleton*, 29 Beav. 646; *Robinson v. Chartered Bank*, L. R., 1 Eq. 32; *Pender v. Lushington*, 6 Ch. D. 70; 46 L. J., Ch. 317.

who had ceased to be shareholders. The transferees afterwards received the regular notices of meetings of shareholders. The directors, subsequently, sought to impeach these transfers, on the ground of the notices never having been submitted to a *board of directors*, nor the consents given by a *board of directors*, as required by the deed, but that the consents had been signed by the managing director, and then signed by two other directors. This appeared to have been the mode of transacting this description of business ever since the formation of the company. The House of Lords decided, that the directors could not set up their own want of observance of the formalities required by the deed, as a ground on which to fix him with liability as continuing to be a shareholder, for that they were bound by their course of dealing (*n*).

It is to be observed, that, on the same facts (except that the register was excluded), a Court of law had previously held the same party to remain a shareholder, as against creditors of the bank, for as there was no consent by a board of directors, the irregular mode of transfer, though adopted for some years, was wholly ineffectual and consequently he remained a shareholder, as against such creditors (*o*).

The question before the House of Lords, however, was whether the directors could take advantage of their own laches to comply with the requirements of the deed of settlement, and treat this person as a member, when, but for their own conduct, there would have been no pretence for doing so.

A deed of settlement of a banking company provided that shares might be transferred with the consent of the directors, but that the transfers should be registered, and that an indorsement of the registration should be made on the deed of transfer, and should be sufficient evidence of the consent of the directors. A shareholder placed his

(*n*) *Bargate v. Shortridge*, 5 H. L. Cas. 297.

(*o*) *Bosanquet v. Shortridge*, 4 Exch. 699.

shares in the hands of a broker, and they were sold nominally to the solicitor of the company, but really (though without the knowledge of the shareholder) to the company itself, the purchase-money being paid out of the funds of the company, and the subsequent dividends being carried to their credit: it was held that, although there was no indorsement on the transfer to the solicitor, the directors' consent was sufficiently proved, and that on the company being wound up, the vendor ought not to be placed on the list of contributories as a shareholder (*p*).

A shareholder executed a transfer of his shares, which he took, together with the certificate, to the company's office for registration. He left the transfer, but refused to leave the certificate for the inspection of the directors, but the Court would not, under the Companies Act, 1862, s. 35, compel the company to register the transfer, as the directors were legally entitled to satisfy themselves of the validity of the certificate (*q*).

*Enhancing Price of Shares.*—Directors representing, with the intent to raise the shares of the company in price, in their reports, and by their agents, that the affairs of the company are in a very prosperous state, and declaring large dividends, at a time when those affairs are greatly embarrassed, and thereby inducing a person to purchase shares, may be made criminally responsible for their conduct (*r*).

So if directors issue false and fraudulent reports to the public, and the officers of the bank supply detailed statements for such reports, knowing that they are to be used for purposes of deceit, and a third person acting on such reports buys shares in the company and sustains loss

(*p*) *Nicol's case*, 3 De G. & J. 387.

(*q*) 33 Beav. 119.

(*r*) *Burnes v. Pennell*, 2 H. L. Cas. 497, 509; *R. v. Aspinall*, 1 Q. B. D. 730; 2 Q. B. D. 46; and see 24 & 25 Vict. c. 96, s. 34, and post, Chap. LIII.

thereby, all assisting in the fraud are personally liable to the purchaser, though the report was signed only by the directors (*s*).

The criminal liability of directors and officers for issuing false reports and balance sheets will be considered in Chapter LIII.

Surrender of shares.

*Surrender of Shares.*—Generally, directors have no power to accept a surrender of shares on behalf of the company. Even where the deed of settlement provides that in all cases not provided for by that or any other supplemental deed of settlement the directors may act in such manner as to promote the interest and welfare of the company, this does not enable them to cancel a retiring director's shares, so as to exempt him from liability (*t*).

But where the deed of settlement or articles of association expressly gives such a power to the directors they may accept a surrender (*u*). A surrender, also, may become valid by ratification by the company (*x*), or by all the shareholders acquiescing in the arrangement (*y*).

But the cancellation of shares by directors, where the shareholder has valid grounds to claim cancellation, is good and effectual, although the shareholder claimed such cancellation on invalid grounds, not being at the time aware of the existence of valid grounds (*z*), as where there

(*s*) *Cullen v. Thompson*, 4 Macq. H. L. Cas. 431; 9 Jur., N. S. 85; *Peck v. Gurney*, L. R., 13 Eq. 79; 43 L. J., Ch. 19.

(*t*) *Stanhope's case*, 3 De G. & S. 198; *Spackman v. Evans*, L. R., 3 H. L. 171; *Walker's case*, 6 Eq. 30; *London and Provincial Coal Company*, 5 Ch. D. 525. By the Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), s. 9, which applies to all companies having a special act and incorporating that act, it is enacted that a company may from time to time accept, on such terms as they may think fit, surrenders of any shares which have not been fully paid up. See also 40 & 41 Vict. c. 26, s. 5.

(*u*) See *Grady's case*, 1 De G., J. & S. 488; *Snell's case*, L. R., 5 Ch. 54; *In re Dronfield Silkstone Coal Company*, 17 Ch. D. 76.

(*v*) See *Brotherhood's case*, 31 Beav. 365; 8 Jur., N. S. 926; *Phosphate Lime Co. v. Green*, L. R., 7 C. P. 43.

(*y*) *Smallcombe v. Evans*, L. R., 3 H. L. 249; *Houldsworth v. Evans*, *ib.* 263.

(*z*) *In re London and Mediterranean Bank*, L. R., 7 Ch. 55.

has been a misrepresentation as to the number of shares alleged to have been subscribed for (z).

*Forfeiting Shares.*—A power to forfeit shares must be expressly conferred by the deed of settlement or articles of association, it cannot be implied or inferred (a). By a clause in a deed of settlement, it was provided that if a proprietor became indebted to the company in respect of cash advances or otherwise, the directors might cancel and declare forfeited, or sell, his shares, either wholly or in part, as the case might require, towards the liquidation of such debt, and such person should thenceforth cease to be a proprietor. A holder of 1,000 shares being indebted to the bank for cash advances, a notice was given to him that unless he redeemed the 1,000 shares by payment of the balance of his account within fourteen days, the directors would on that day cancel and declare his shares forfeited, and would place the value of the shares on that day to the credit of his account. The balance not having been paid, the directors passed a resolution declaring the shares to be cancelled and forfeited. The value of the shares on that day was considered by them to be 10,000*l.*, and it was resolved that credit should be given to the proprietor for that amount in his account. He afterwards filed a bill to set aside the cancellation. The market price of the shares, on the day of the resolution, slightly exceeded that allowed by the directors, although if the shares had been carried into the market, the price would have been reduced greatly below that amount. A Court of Equity decided that the directors having placed themselves in the position both of vendors and purchasers were bound to allow the highest market price which could be obtained for the shares, without speculating upon what might have been the effect of

Forfeiting  
shares.

(z) *In re London and Mediterranean Bank*, L. R., 7 Ch. 55.

(a) *Clarke v. Hart*, 6 H. L. Cas. 633; *Hope v. International Financial Society*, 4 Ch. D. 327; 46 L. J., Chanc. 200. As to forfeiture of shares under the Companies Act, 1862, see Table A, Cl. 17—22; and as to companies governed by 8 & 9 Vict. c. 16, see sects. 29—35.

throwing the 1,000 shares into the market, and the cancellation was declared to be void (*b*). The power to forfeit, where it exists, must be strictly construed (*c*).

Paying dividends out of profits.

*Paying Dividends out of Profits.*—The payment of dividends derived from other sources than the profits of the company is a fraud on the part of the directors: for dividends are supposed to be paid out of the profits only, and when directors order a dividend to any given amount, they, without expressly saying so, yet, impliedly, do declare to the world that the company has made profits which justify such a dividend. This is a gross fraud, for which they are liable to be punished.

In case any one, in consequence of *such implied misrepresentations*, buys shares, and, it appearing that the concern is failing, he is injured, he may proceed against the directors by action; they are liable, also, to be indicted in such case: even if no one can be shown to have been injured, as a matter of strict law, they are liable to an indictment for a conspiracy (*d*).

The directors of a banking company in February, 1864, issued a report declaring a dividend of fifteen per cent. upon the shares, and a bonus of ten per cent., and a large addition to the reserve fund. In June, 1864, they offered to the shareholders the option of taking (according to the proportion of shares held by each shareholder) a certain number of reserved shares at a considerable premium. The executors of a deceased shareholder accepted some of these reserved shares. The report of February, 1864, was, in fact, utterly erroneous, and in September the bank stopped payment. No evidence of wilfulness on the part of the directors in misrepresenting the affairs of the company was adduced. The House of Lords held, that there

(*b*) *Stubbs v. Lister*, 1 Y. & C. N. C. C. 81.

(*c*) See *Clarke v. Hart*, *supra*; *Johnson v. Lythe's Iron Agency*, 5 Ch. D. 687.

(*d*) *Burnes v. Pennell*, 2 H. L. Cas. 524, 525; *R. v. Aspinall*, 1 Q. B. D. 730; 2 Q. B. D. 48.

was not enough on this state of facts to constitute a misrepresentation to avoid the acceptance of the shares, and so prevent the executors from being put personally upon the list of contributories (e).

A bill was filed by a shareholder against directors of a banking company to restrain them from paying a dividend already declared, and from declaring or paying any future dividends, except out of the profits of the bank, but the other shareholders were not before the Court. The Court granted an injunction as to future dividends, but refused to restrain the payment of the dividend that had been declared, on the ground that the declaration of the dividend gave the shareholders a legal right to the payment of that dividend, and the Court would not, in the absence of a representation by all the shareholders, interfere with that right (f).

*Answering Interrogatories.*—The effect of a compulsory winding up is to take all control over the affairs of the company out of the hands of its directors, but they may still be considered to continue officers of the company, and may be ordered to answer interrogatories in an action begun after the commencement of the winding up (g).

(e) *Jackson v. Turquand*, L. R., 4 H. L. 305.

(f) *Fawcett v. Laurie*, 1 Drew. & Sm. 192.

(g) *Madrid Bank v. Bailey*, 36 L. J., Q. B. 15.

## CHAPTER LI.

## MANAGER.

BANKING copartnerships and companies, where their business is extensive, or branches are established, appoint managers. In deeds of settlement of joint stock banks formed under the 7 & 8 Vict. c. 113, a specific provision as to the appointment of a manager, or other officer to perform the duties of manager, is necessary (*a*). That statute requires the manager to make out, verify, and deliver to the stamp office, the annual returns of the title of the company, the names and places of abode of the members, directors, and manager, and the names and places of the local banks established by the principal bank (*b*). Legal proceedings and notices may be served upon him (*c*). The duties imposed by this statute upon managers of joint stock banks formed under its provisions and still in operation must be continued to be discharged by them. The subsequent acts regulating the formation of banking companies do not specifically require the appointment of managers. But when these companies appoint managers, then the penalties which the Companies Act of 1862 imposes upon managers of limited banking companies omitting or neglecting to affix the name of their company on the outside of its several places of business and branches, to sign instruments, official documents, and notices with the seal of the company, to publish the statements of its capital, assets, and liabilities (*d*), to notify to the registrar every increase of the capital of the company (*e*),

(*a*) Sect. 4, and ante, pp. 390, 391.

(*b*) *Id.* ss. 16—18, ante, p. 385.

(*c*) *Id.* s. 43, ante, p. 391.

(*d*) Ante, pp. 408—415.

(*e*) Ante, pp. 409, 410.

to keep the register of its members (*f*), to make out and forward to the registrar the annual list of its members and summary of particulars (*f*), as required by that act, or refusing an inspection of the register (*g*), will be incurred by the managers. It will be their office to attend to the proper discharge of these different duties.

A manager may carry on a separate business, as a merchant or otherwise, by the permission of the company, which is, however, unusual, and generally inconvenient; but by his so doing, he is not entitled to grant himself the same accommodation in respect of his separate trade, which he might obtain from an independent banker. It would be necessary for him, in order to sustain such a proceeding, to show that he had brought the whole circumstances most fully and fairly before the directors; it would not be enough to show merely that he had not concealed any thing; such a proceeding, if the whole had been brought before the directors and had been assented to by them, might be permitted to stand, but only in that case (*h*).

A manager of a banking copartnership, then, has no right to grant himself accommodation out of the funds of the bank without the consent of the directors, given with a full knowledge of all the circumstances. This, however, though it will prevent the company from repudiating the transaction, will, in many cases, as of course, fail to save them from loss.

Thus, the manager of a branch bank, and also the executor of a testatrix, had lent 1,500*l.* on the security of a ship. The manager afterwards shifted the security from this ship to another ship, and in his character of executor borrowed 1,600*l.* from the bank, and also lent it to the owner of the latter ship, and took a mortgage of that ship, for the 1,500*l.* lent by the testatrix, and also for the 1,600*l.*,

(*f*) Ante, p. 411.

(*g*) Ante, p. 413.

(*h*) *Gwatkin v. Campbell*, 1 Jur., N. S. 131.

which he had lent as executor. As security for the money lent to him by the bank, he, several months after the advance by the bank, assigned to them this mortgage, and the mortgage debts. The last-mentioned ship was sold for 1,150*l*. In a suit by the residuary legatees of the testatrix against him and the bank for the recovery of this sum, the executor was held to have no right to pledge the assets; and as he was also the agent of the bank, the bank was considered as having had notice of his inability to pledge the assets, and so could stand in no better position than he did, and the legatees were entitled, in preference to the bank, to the 1,150*l*. (*i*).

#### Bills.

*Bills*.—Where a bill is drawn, accepted or indorsed by a manager of a bank, with the words *per procuration*, the legal effect of these words is to give an express intimation to every one, that the acceptance or indorsement was made under a special or limited authority, binding every one, therefore, to ascertain, before he takes such a bill, that the indorsement is agreeable to the authority given, according to a well-known rule respecting all such acceptances or indorsements. A party taking such a bill, therefore, without inquiry, if it turns out that the manager accepting or indorsing exceeded his authority, must suffer for his temerity (*k*).

It is customary with many banking companies to communicate, by circular to their agents and correspondents, the fact of the appointment of their manager, and his authority to sign drafts on their account, with a specimen of his handwriting.

A promissory note, to secure an account at a branch bank at Birmingham, of a banking copartnership, called

(*i*) *Collinson v. Lister*, 25 L. J., Chanc. 38; 20 Beav. 356; 7 De G., Mac. & G. 634. As to a manager suing for percentage or commission against the company, see *Law v. Thompson*, 15 M. & W. 541.

(*k*) *Alexander v. Mackenzie*, 6 C. B. 766; *Stagg v. Elliott*, 12 C. B., N. S. 373; 31 L. J., C. P. 260. See further, pp. 300, 301.

the National Provincial Bank of England, was given in this form :—

£1,000.

*Birmingham, March 24, 1836.*

Three months after date we promise to pay to the Manager of the National Provincial Bank of England the sum of One thousand pounds.

A. B.

C. D.

E. F.

At this time the National Provincial Bank of England carried on business in other places as well as in Birmingham by means of branch banks, but had a general board of management at London, under a board of directors, at which Robertson was manager. Elrich was the local manager at Birmingham.

In an action against A. B. and C. D. on this note by Robertson, who declared, as manager of the National Provincial Bank of England not styling himself public officer, it was objected, that the action should have been brought by the bank, suing by their public officer; but it was ruled, that the facts stated were distinct evidence to go to the jury that the plaintiff was the manager intended in the note, and that it was not open to the defendants to contend that the bank ought to have sued by its public officer. Judgment accordingly was given against the defendants (*l*).

A banking company, being the holder of bills indorsed to them in blank, may authorize their manager to sue upon such bills (*m*).

An instrument, in the form of a bill of exchange, drawn on the head office by the manager of a branch bank by order of the directors, but expressed in the body of it thus, "pay, without acceptance," may be treated as a promissory note, and the directors may be sued as makers by an indorsee or a holder (*n*).

*Duties and Authority.*—The public officer is not neces-

(*l*) *Robertson v. Sheward*, 1 M. & G. 511.

(*m*) *Law v. Parnell*, 7 C. B., N. S. 282; 30 L. J., C. P. 17.

(*n*) *Miller v. Thomson*, 3 M. & G. 576.

sarily manager of the affairs of the copartnership (*o*), though one person may discharge both offices. Whether in any given case that is so or not, must depend, in general, upon the terms of the deed of settlement or of his appointment, which also is the source to ascertain whether any act is within the scope of the authority, or not, of the manager, or public officer. What is the authority and the extent of it are questions of fact, and the answer is to be sought for in the deed of settlement, in the first instance; if that is silent on the subject, then, evidence of what acts are usually performed by managers, or what acts the manager of the particular company has been used to perform, as the case may be, must be resorted to (*p*).

It will be most convenient to define in the articles of association, as carefully and fully as possible, the duties and powers of the manager, especially as regards external acts, such as the extent to which, and the form in which, he may bind the company by accepting or indorsing bills, taking up or advancing loans, &c.

The situation of manager is one of high trust, but the trust becomes still greater, and the responsibility much enhanced, in the case of a *local* manager of a branch establishment of the bank. For many purposes he is looked upon by the law and is treated as if he were the whole body, whom he has power to bind even by his tortious acts, although he may not be a partner.

For instance, if a local manager of a branch bank gets into his hands the money of a customer of the bank by inducing the customer to consider that he is acting in the transaction as agent of the bank and is invested with authority to effect the purposes for which the customer confides the money to him, and then appropriates the money to his own purposes, the customer's loss will fall upon the copartnership. To hold the bank not to be liable in such case would be, it has been said, to hand over the public to

(*o*) *Alexander v. Mackenzie*, 6 C. B. 766.

(*p*) *Eyre v. M'Dowell*, 14 Ir. Com. Law Rep. 214.

the mercy of the clerks employed by these banks. The principle seems to be, that the manager is a servant whom the bank, for the purposes of their trade, virtually accredit and hold out to the world as invested by them with general authority to act for them in the affairs of the branch bank, and the public has no power or means to discriminate what is, and what is not, in any particular case, within the legitimate scope of the agent's powers or in accordance with the directions of his principals; and, therefore, when a customer, in a matter connected with his relations with the branch bank, confides in the servant, he, in fact, trusts the masters and they are liable even for the fraud of the servant whom they have appointed, if committed in the course of his service (*q*).

It is usual for customers of a bank to make inquiries through their bankers as to the commercial credit and solvency of persons with whom they intend to have monetary transactions, as a measure of precaution to themselves. It is within the scope of a manager's general authority to make these inquiries and to afford the requisite information. If the information is given in writing and it turns out to be false or untrue, whereby the party for whose benefit it is supplied suffers loss, the banking company will be liable as well as the manager if they are both sued together (*r*). Thus, the plaintiff sued the public officer of the Gloucestershire Banking Company, established under 7 Geo. IV. c. 46, and their manager at one of its branches, for a false representation with respect to the solvency of Sir William Russell. It appeared that the plaintiff was a customer of the Sheffield and Hallamshire Bank, and had requested the manager of that bank to inquire for him as to Sir William Russell's credit. The

(*q*) *Thompson v. Bell*, 10 Exch. 11. See *Pickering v. Busk*, 15 East, 53; *Barwick v. London Joint Stock Bank*, L. R., 2 Ex. 259; *Mackay v. Commercial Bank of New Brunswick*, L. R., 5 P. C. 394; *McGowan v. Dyer*, L. R., 8 Q. B. 141; *Addie v. Western Bank of Scotland*, L. R., 1 H. L. 145; *Houldsworth v. City of Glasgow Bank*, 5 App. Cas. 317.

(*r*) *Hosegood v. Bull and Kingdom*, 36 L. T. 617; *Swift v. Winterbotham*, L. R., 8 Q. B. 244.

manager wrote a letter addressed to the manager of the Gloucestershire Banking Company, requesting information whether Sir William Russell was responsible to the extent of 50,000*l*. The manager of that company wrote a letter, in which he signed himself as manager, giving a favourable reply as to Sir William Russell's responsibility. The plaintiff in consequence of this letter supplied Sir William Russell with goods, for which he never was paid in consequence of Sir William Russell's insolvency. The statement made by the manager was false to his knowledge. This company, however, had no knowledge, otherwise than through their manager, that such a letter had been written, and gave him no express authority to write the letter, but the writing of such a letter was an act within the scope of the general authority conferred on him as manager by the company; the Court of Queen's Bench upon this state of facts held, first, that his signature as manager was not merely that of an agent but of the banking company itself, and therefore the signature of the party to be charged within 9 Geo. IV. c. 14, s. 6 (*s*), so as to make the banking company liable for the false representation; secondly, that the letters showed that the communications were between the two banks, and the representation was not merely the representation of the manager personally but of the banking company; thirdly, that inasmuch as it is usual for customers of a bank to make inquiries of the description made by the plaintiff, it must be taken to have been within the contemplation of the banking company that the inquiry as to Sir William Russell's solvency might have been made on behalf of a customer of the Sheffield bank, and that the representation might be com-

(*s*) By this statute, which is commonly called Lord Tenterden's Act, it is enacted, "That no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person to the intent or purpose that such other person may obtain credit, money or goods upon (*sic* in the original section), unless such representation or assurance be made in writing, signed by the party to be charged therewith."

municated to him, and that the banking company and their manager were liable to the plaintiff, he being the customer who had made the inquiry, and for whose benefit it was intended; fourthly, that the banking company was liable for the false representation of its manager, made in the course of conducting the business of the bank; and lastly, that as all persons directly concerned in the commission of a fraud are to be treated as principals, the banking company and their manager might be sued jointly (*t*).

So again, where the plaintiff—having for some time, on the guarantee of the defendant, supplied J. D., a customer of theirs, with oats, on credit, for carrying out a government contract—refused to continue to do so unless he had a better guarantee, the defendant's manager thereupon gave him a written guarantee to the effect that the customer's cheque on the bank in plaintiff's favour, in payment for the oats supplied, should be paid, on the receipt of the government money, in priority to any other payment, "except to this bank." J. D. was then indebted to the bank to the amount of 12,000*l.*, but this fact was not known to the plaintiff, nor was it communicated to him by the manager. The plaintiff thereupon supplied the oats to the amount of 1,227*l.*; the government money, amounting to 2,676*l.*, was received by J. D., and paid into the bank, but J. D.'s cheque drawn on the bank for the price of the oats in favour of the plaintiff was dishonoured by the defendants, who claimed to retain the whole sum of 2,676*l.* in payment of J. D.'s debt to them. The plaintiff having brought an action for false representation, and for money had and received:—Held, first, that there was evidence to go to the jury that the manager knew and intended that the guarantee should be unavailing, and fraudulently concealed from the plaintiff the fact which would make it so; secondly, that the defendants would be liable for such fraud in the agent; thirdly, that the

(*t*) *Swift v. Winterbotham*, L. R., 8 Q. B. 244.

fraud was properly charged in the declaration as the fraud of the defendants (*u*).

The arrest, and still less the prosecution, of an offender does not come within the ordinary routine of a banking business, and is consequently not within the ordinary scope of its manager's authority (*x*).

A manager and cashier of a bank obtained the signature of B. to a document in the form of a cheque, purporting to be drawn upon the bank by B., under the pretence that it was a receipt for a private debt due to him from the manager. B. was an illiterate person, and unable to read, and the manager then paid B. his debt with the banker's money. The transaction was entered in the bank books, as a loan by the bank to B., upon his cheque. B. was not a customer of the banker; it was held that the banker was not entitled to recover back the money from B., for the cheque was obtained by the fraud of the banker's agent, and that he must suffer the loss, if the manager was unable to make it good (*y*).

That the manager of a branch bank must necessarily have a larger authority than usually attaches to agents is apparent from this: an agent, in general, has no authority implied by law independently of his particular instructions to borrow money for the service of his principals in the business he conducts for them: to obtain deposits, that is, to obtain loans of money for his employers, is one principal part of the business of a manager of a branch bank; his power, in this respect, is unlimited; and thus he makes them responsible for every shilling which he receives from a customer of the bank.

So, if he advances money on loan, the loss, if any, must fall on the shareholders of the bank: thus, in a case where the manager of a branch bank had advanced money to the agent of a mining concern, to pay the wages of the labourers

(*u*) *Barwick v. English Joint Stock Bank*, supra.

(*x*) *Bank of New South Wales v. Oveston*, 4 App. Cas. 270.

(*y*) *Foster v. Green*, 1 H. & N. 881; 31 L. J., Exch. 158.

in the mine, which were in arrear, and for which they had obtained warrants of distress upon the materials, &c., in the mine, the copartnership of the bank was unable to recover the amount of the advances, by action, against a shareholder in the mine, on the ground that an agent, in general, has no implied authority to borrow money for the service of his employers, and there was no evidence of any special authority having been given by the shareholders, although the money had been applied in payment of the wages due from the shareholders to the labourers (z).

In respect of any contract into which the manager may enter on behalf of a branch bank (provided it falls within the usual course of banking business), although, under the deed of settlement, or otherwise, the manager may be restricted from entering into contracts of that particular class, there being no proof that the party, with whom the contract was entered into, was cognizant of such restriction, the copartnership will be liable (a).

Where in an action by a banking company against their late manager and cashier to recover moneys belonging to the bank, alleged to have been improperly applied, in discounting bills for his own advantage, for the benefit of persons and companies with whom he was connected, and in which he was interested, it appeared that such transactions were all in the ordinary course of the business of the bank, that he had not exceeded the power and authority with which he was entrusted, and that no case of bad faith could be established against him, the Privy Council held that the action was not maintainable (b).

The criminal liability of managers will be mentioned in Chapter LIII.

(z) *Hawtayne v. Bourne*, 7 M. & W. 595.

(a) *Hawken v. Bourne*, 8 M. & W. 709; see *Ex parte Chippendale*, 4 De G., Mac. & G. 19.

(b) *Bank of Upper Canada v. Bradshaw*, 4 Moore, P. C. C., N. S. 406; L. R., 1 P. C. 479; and see *Ward v. Greenland*, 19 C. B., N. S. 527.

## CHAPTER LII.

## PUBLIC OFFICER.

*Appointment.*—The 7 Geo. IV. c. 46 (1826), which legalized the establishment of banking copartnerships in England, exceeding a radius of sixty-five miles from London, required them to nominate and appoint two or more public officers, being members and resident in England, and empowered them to sue and to be sued in the name of one of such public officers (*a*). The duties which this act imposes upon a public officer are the making out, verifying on oath, and delivering to the stamp office the several annual returns in the forms prescribed, as pointed out in a former Chapter (*b*). These provisions apply only to banking companies established *beyond* sixty-five miles from London. The 3 & 4 Will. IV. c. 98, which enabled banking companies to establish themselves *within* sixty-five miles of London, did not confer upon them the power or privilege of suing or being sued in the name of a public officer. The 7 & 8 Vict. c. 113, s. 47, first conferred this power or privilege upon these banking companies, if established before the 6th of May, 1844, provided they made out and delivered, from time to time, to the Board of Inland Revenue, the returns required by the 7 Geo. IV. c. 46, and all the provisions of such act are to apply to the accounts or returns so made out and delivered by such companies, as if they had been originally included in the provisions of the 7 Geo. IV. c. 46. The Companies Act, 1862 (*c*), although it repeals the 7 & 8 Vict. c. 113, expressly re-enacts the 47th section. The appointment of

(*a*) 7 Geo. 4, c. 46, s. 9.

(*b*) Ante, pp. 376, 377.

(*c*) 25 & 26 Vict. c. 89, s. 205. Third Schedule, Part II.

public officers by banking companies, formed under the provisions of the 7 & 8 Vict. c. 113, became altogether unnecessary on their obtaining charters of incorporation; neither are public officers required to be appointed by banking companies established under the Companies Act of 1862, as on registration these companies become entitled to all the privileges of incorporated bodies (*d*).

The appointment of public officers, when required, is regulated by the terms of the deed of settlement of the company, and should generally be made by a deed. The appointment may be proved by a certified copy of the official return to the stamp office, or by the production of the instrument appointing them, or even by parol evidence (*e*).

Banking copartnerships surrendering their right to issue their own bank notes, by agreement with the Bank of England, do not lose the privilege of suing or being sued in the name of their public officer (*f*).

*Actions and Suits.*—In respect of banking companies governed by 7 Geo. IV. c. 46, all actions by or against the company must be brought by or against its public officer, and not otherwise (*g*).

In an action by a public officer, it is usual, though not essential, to allege, in the declaration, that he, at the commencement of the suit (*h*), has been named and duly appointed one of the public officers of the copartnership; but it is not necessary to state that he is a member of the company, or that he has been duly registered (*i*), or that he has been duly named and appointed as the nominal plaintiff on behalf of the copartnership (*k*).

(*d*) 25 & 26 Vict. c. 89, s. 18.

(*e*) *Edwards v. Buchanan*, 3 B. & Ad. 788.

(*f*) 27 & 28 Vict. c. 32, s. 1.

(*g*) *Steward v. Greaves*, 10 M. & W. 721; *Todd v. Wright*, 16 L. J., Q. B. 311; *Chapman v. Milvain*, 5 Exch. 61.

(*h*) *Esdaile v. Maclean*, 15 M. & W. 277; *M<sup>c</sup>Intyre v. Miller*, 13 M. & W. 725.

(*i*) *Spiller v. Johnson*, 6 M. & W. 570.

(*k*) *Christie v. Peart*, 7 M. & W. 491.

Notwithstanding the change of name of the copartnership, and the accession of fresh proprietors, the increase of their capital, and the addition of fresh directors, the public officer of the new copartnership is the proper person to sue on a guarantie given to the company before the alteration (*l*).

The public officer may sue after the copartnership has suspended payment, and the establishment is kept open only for the purpose of winding up (*m*).

A copartnership having become insolvent, and ceased to carry on business, the public officer instituted a suit in equity, charging some of the directors with losses, by reason of unauthorized speculations in shipping, and of a fraudulent transaction by a deed of arrangement with a debtor to the company, praying relief in respect of all these matters, and to have the deed set aside. The suit was considered to have been properly instituted by the public officer, although the company had ceased to carry on business; that directors and trustees, not charged with improper transactions or fraud, need not be made parties to the suit; but the manager, who, it appeared, was mixed up in these transactions, ought to be made a party; and that though there were several distinct transactions, they were properly comprised in a single suit (*n*).

So, when a warrant of attorney has been given to the trustees of the copartnership to secure a debt due to the copartnership, the judgment thereon can only be entered up in the name of the public officer (*o*).

So the public officer is to sue on a breach of covenant with trustees of the copartnership to pay calls (*p*), and, in general, is the only proper party to sue on all covenants in the deed of settlement; although the covenants are made with trustees (*q*).

(*l*) *Wilson v. Craven*, 8 M. & W. 584.

(*m*) *Davidson v. Cooper*, 11 M. & W. 778.

(*n*) *Harrison v. Brown*, 5 De G. & S. 733.

(*o*) *Bell v. Fisk*, 12 C. B. 493.

(*p*) *Wills v. Sutherland*, 4 Exch. 211.

(*q*) *Chapman v. Milvain*, 5 Exch. 61.

But a note payable to the order of a person who is a trustee for the company must, if unindorsed, be sued upon by the payee, and not by the public officer of the company (*r*).

The company will not be bound by a judgment in an action by a person not at the time their public officer (*s*). If a defendant, in an action purporting to be brought by a public officer of a company, traverses his appointment as public officer, and has a verdict on that issue, it is a good defence (*s*).

The public officer may file a petition for adjudication of bankruptcy or sue out a judgment debtor summons against a debtor indebted to the copartnership, provided, in the declaration signed by him, he declares that he is such public officer, and entitled to sue (*t*).

So he may prove on a bankrupt's estate in like manner (*u*).

Both the public officers cannot sue together; but if they are joined, an amendment by striking out the name of one will be allowed (*x*).

*Liabilities.*—In an action in which a public officer sues on behalf of the company, interrogatories may be administered to him, and he must answer them (*y*).

When an action is brought against the public officer of a copartnership, as such, he will not be permitted to plead that he has become bankrupt, for he is a mere parliamentary defendant; he represents the interests, perhaps, of several hundred persons, and, if he were to be allowed to

(*r*) *M'Dowell v. Dogle*, 7 Ir. Com. Law Rep. 598.

(*s*) *Barnewall v. Sutherland*, 19 L. J., C. P. 292. See *Paterson v. Ironside*, 14 Jur. 722.

(*t*) Bankruptcy Act, 1869, s. 80, par. 7.

(*u*) *Id.* s. 144. See a form of affidavit of proof of debt by a public officer in Schedule of Forms, p. 212, Roche & Hazlitt's Bankruptcy Act, 1869.

(*x*) *Holmes v. Binney*, 6 Scott, 346; 4 Bing. N. C. 454. As to suing both, 16 M. & W. 669.

(*y*) *M'Kenna v. Rolt*, 28 L. J., Exch. 380; 4 H. & N. 738. See Judicature Acts, Ord. XXXI. r. 4.

plead such a plea, of a matter merely personal to himself, in bar of the action, he would confer the benefit of that defence on all those whom, as a matter of form, he represents as defendants. In such a case, however, the plaintiff would be restrained from issuing execution against the defendant, or his estate (*y*). Nor does attachment lie against him (*z*).

Accordingly, it has been held that where a deed of settlement provided, that if any of the public officers became bankrupt he should become disqualified, and his office should become vacant, the proper construction was not that the person should cease to be public officer absolutely, but only at the election of the company (*a*). If bankruptcy, per se, disqualified, the company could have had no election.

So, a person sued as public officer will not be allowed to plead that he is not public officer, *together* with other pleas going to the merits of the action. He may rely on that plea as his sole defence, if it is capable of proof; but, as the company are the real defendants, they must rely on such defence as they have to the merits of the action; they cannot be allowed to turn the plaintiff round on so mere a matter of form as whether the defendant was public officer at the commencement of the suit (*b*). But in an action by a public officer, a plea denying that the copartnership was at the commencement of the action carrying on the trade or business of bankers, in addition to pleas of non assumpsit and of accord and satisfaction, will be allowed (*c*).

*Death, Resignation or Removal.*—The death, resignation, or removal of a public officer will not abate any action,

(*y*) *Steward v. Dunn*, 11 M. & W. 63.

(*z*) *Corpe v. Glyn*, 3 B. & Ad. 801.

(*a*) *Steward v. Dunn*, 12 M. & W. 655.

(*b*) *Needham v. Law*, 11 M. & W. 400. *Quære*, whether this is so now under the powers of alternative pleading given by Ord. XIX. r. 8, of the Judicature Acts, 1873, 1875. See also rule 11 of that Order.

(*c*) *Roe v. Fuller*, 7 Exch. 220; 21 L. J., Exch. 104.

suit, or proceeding commenced by or on the behalf of or against the copartnership, but the same may be continued, prosecuted, and carried on in the name of any other of the public officers of the copartnership for the time being (*d*). If the public officer dies during the progress of an action, a suggestion of his death, and of the appointment of his successor, should be entered on the proceedings before the next step is taken, otherwise they may be set aside for informality (*e*).

A *cognovit actionem*, given to a public officer, was considered to be sufficient, after his removal, to authorize a succeeding public officer to enter up judgment in his own name (*f*). To enter it up in the name of the officer, in whose time the *cognovit* was given, would be erroneous (*g*).

When the public officer dies after judgment obtained in an action, and after the issuing of a writ of *ca. sa.*, but before its execution, this does not cause the action, or the proceedings consequent on it, to abate, and, therefore, it was held, a defendant could be taken in execution (*h*).

In equity, it was ruled, as there was no change of interest, it was unnecessary to file any supplemental bill, in order to make a new registered public officer a party to the suit (*i*).

*Judgment against.*—When a plaintiff obtains judgment against a public officer, he may issue execution against him without first suing out a *scire facias*, for he is already a party to the record (*k*).

(*d*) 7 Geo. 4, c. 46, s. 9. And see now Jud. Acts, Ord. XIX. r. 13, and Ord. L. rr. 1, 4.

(*e*) *Barnewall v. Sutherland*, 19 L. J., C. P. 290; 14 Jur. 720; 9 C. B. 380; *Paterson v. Ironside*, 14 Jur. 722, n. See Jud. Acts, Ord. L. and *Crane v. Loftus*, 24 W. R. 93.

(*f*) This seems to be the effect of the judgment in *Webb v. Taylor*, 1 D. & L. 676. But a judge's order by consent has now almost entirely superseded the practice of *cognovits*. See Archibald's Practice, pp. 248, 249.

(*g*) See 1 D. & L. 687; *Probin v. Locoek*, 1 Dowl., N. S. 197.

(*h*) *Todd v. Wright*, 16 L. J., Q. B. 311; *Ellis v. Griffiths*, 16 M. & W. 106.

(*i*) *Butchart v. Dresser*, 18 L. J., Chanc. 198; 10 Hare, 453.

(*k*) *Harwood v. Law*, 7 M. & W. 203.

*Indemnity.*—A public officer, in whose name any suit or action has been commenced, prosecuted or defended, sustaining any loss, damages, costs, or charges will be entitled to reimbursement out of the funds of the copartnership, or, in failure thereof, to contribution from the other members, as in a case of an ordinary partnership (*l*).

*Criminal Proceedings.*—Prosecutions by public officers on behalf of the company, and their criminal liability, will be treated of in the next Chapter.

(*l*) 7 Geo. 4, c. 46, s. 14.

## CHAPTER LIII.

CRIMINAL LIABILITY OF MEMBERS AND OFFICERS OF  
BANKING COMPANIES.

THE members of the copartnerships either established beyond sixty-five miles from London under the 7 Geo. 4, c. 46, or established in London, or within sixty-five miles of London under the 3 & 4 Will. 4, c. 98, s. 3, may be prosecuted in the name of their public officer for any misdemeanor or felony committed by them against these copartnerships as if they were actually strangers (*a*). A clerk may therefore be convicted of embezzling or stealing the property of one of these copartnerships, although he is a shareholder (*b*). The property may be alleged in an indictment for larceny or for embezzlement to belong to one of the public officers or of one of the members named and others (*c*). The members of banking companies formed under the 7 & 8 Vict. c. 113, or registered under the 20 & 21 Vict. c. 49, or the Companies Act, 1862 (*d*), committing fraudulent or other criminal acts against their company will be liable to prosecution at the suit of and in the registered or corporate name of that particular company.

The legislature has created certain specific acts of directors, members, managers and public officers, misdemeanors, to which it will be necessary to refer in detail.

It may be mentioned that banking co-partnerships formed under the provisions of the 7 Geo. 4, c. 46, are public companies (*e*); and banking companies registered

(*a*) 3 & 4 Vict. c. 111, s. 2; made perpetual by 5 & 6 Vict. c. 85.

(*b*) *Reg. v. Atkinson*, Car. & M. 525; 2 Mood. C. C. 278.

(*c*) 7 Geo. 4, c. 64, s. 14; *Reg. v. Pritchard*, 30 L. J., M. C. 169; 8 Cox. C. C. 461.

(*d*) See sect. 18.

(*e*) See *M'Intyre v. Connell*, 20 L. J., Chanc. 284; *Graham v. Connell*, 19 L. J., Exch. 364.

under the Companies Act, 1862, are bodies corporate within the scope of the following enactments.

*Fraudulently appropriating the Property of the Company.*—A director, member or public officer of a body corporate or public company who fraudulently takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of the body corporate or public company, any of the property of the body corporate or public company, will be guilty of a misdemeanor (*f*).

*Keeping Fraudulent Accounts.*—A director, public officer or manager of a body corporate or public company, who receives or possesses himself of any of the property of the body corporate or public company, otherwise than in payment of a just debt or demand, and with intent to defraud omits to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of the body corporate or public company, will commit a misdemeanor (*g*).

*Falsifying or destroying Accounts or Documents.*—So a director, manager, public officer or member of a body corporate or public company who, with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing or valuable security belonging to the body corporate or public company, or makes or concurs in the making of any false entry, or omits or concurs in omitting any material particular in any book of account or other document, will be guilty of a misdemeanor (*h*).

*Publishing false Statements or Balance Sheets.*—A director, manager or public officer of a body corporate, or

*f* 24 & 25 Vict. c. 96, s. 81.

*g* *Id.* s. 82.

*h* *Id.* s. 83.

public company, making, circulating or publishing, or concurring in making, circulating or publishing any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of the body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to the body corporate or public company, or to enter into any security for the benefit thereof, will be guilty of a misdemeanor (*i*).

A false representation by an officer or a servant of a company, even though when made at the bank, is not for criminal purposes the representation of the company (*k*). A false representation, in order to be the representation of the company, must be made by a report adopted at a general meeting, and put forth to the public either intentionally or circulated in the ordinary course of business (*k*).

The directors of a bank are liable also to be indicted for a conspiracy to defraud by publishing false balance sheets, and circulating false reports as to the condition and solvency of their bank, and issuing new shares to the public, at a time when they know the bank to be in a state of insolvency. The manager will be equally liable with the directors under such circumstances, where he has the chief control and management of all the affairs and transactions of the bank (*l*).

When the manager and the secretary of a banking company were indicted for making and publishing false statements of the affairs of the bank, and conspiring together to do so, the prosecutors were put to their election as to the counts on which they would rely, and having elected to rely on the counts for conspiracy, it was not enough to

(*i*) 24 & 25 Vict. c. 96, s. 84.

(*k*) *Ex parte Frowd*, 9 W. R. 328; 3 L. T., N. S. 843.

(*l*) *Reg. v. Esdaile*, 1 F. & F. 213; 7 Cox, C. C. 442, and the report of the trial of *The Attorney-General v. Brown and others*, coram Lord Campbell, C. J., Feb. 1858, by J. C. Evans, Esq., and published by Messrs. Stevens & Norton, Bell Yard. See also *R. v. Aspinall*, 1 Q. B. D. 730; 2 Q. B. D. 48; 46 L. J., M. C. 145.

prove that they made and put forth statements intended and calculated to deceive, unless they had entered into a precedent and fraudulent conspiracy to do so (*m*).

With respect to the foregoing misdemeanors, it is provided, as in the case of bankers fraudulently misapplying or disposing of securities or property intrusted to their care, that the parties are not to be privileged from answering questions in relation to the charges in any civil proceedings, but on making disclosures in any compulsory proceeding they are not liable to a criminal prosecution (*n*).

Neither is any criminal prosecution for the commission of any of these misdemeanors to affect or to prejudice any remedy or right at law or in equity against the delinquent parties (*n*). Convictions (*o*) are not, however, to be admissible in evidence in civil proceedings (*p*).

The Companies Act of 1862 provides for the prosecution of directors and other officers, found, on the winding-up of a company, to be delinquents. The following are the provisions relating to this subject:—

*Power of Court to assess Damages.*—If, in the course of winding-up proceedings, it should appear that a past or present director, manager or officer, has misapplied or retained or become liable or accountable for any moneys of the company, or has been guilty of misfeasance or breach of trust in relation to the company, the Court may, on the application of a liquidator or of a contributory or of a creditor, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of the director, manager or officer, and compel him to repay the moneys so misapplied or retained, or for

(*m*) *Reg. v. Burch*, 4 F. & F. 407.

(*n*) 24 & 25 Vict. c. 96, ss. 85, 86. See *R. v. Skeen*, 28 L. J., M. C. 91, and ante, p. 289.

(*o*) The punishment on conviction for any of these misdemeanors is defined by sect. 75 of the 24 & 25 Vict. c. 96, to be penal servitude for not more than seven nor less than five years (by 27 & 28 Vict. c. 47, s. 4), or imprisonment for not more than two years, with or without hard labour, and with or without solitary confinement. These misdemeanors, however, cannot be prosecuted or tried at quarter sessions; sect. 87.

(*p*) 24 & 25 Vict. c. 96, s. 86.

which he has become liable or accountable, with interest, or to contribute such sums of money to the assets of the company by way of compensation, as the Court may think just (*q*).

*Falsification of Books.*—If a director, officer or contributory of a company winding up should be found to have destroyed, mutilated, altered or falsified any books, papers, writings or securities, or to have made or been privy to the making of any false or fraudulent entry in any registry, book of account or other document belonging to the company, with intent to defraud or deceive any person, every person so offending will be deemed guilty of a misdemeanor, and upon being convicted will be liable to imprisonment for any term not exceeding two years, with or without hard labour (*r*).

*Prosecution of Delinquent Directors.*—Where there is an order for winding up a company by the Court, or subject to the supervision of the Court, if it should appear in the course of such winding-up that a past or present director, manager, officer or member, has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in the winding-up or of its own motion, direct the official liquidator or the liquidator (as the case may be) to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company (*s*). This application must be made by petition (*t*).

*Prosecution of delinquent Directors, Officers or Members, under a voluntary Winding-up.*—Where the winding-up is

(*q*) 25 & 26 Vict. c. 89, s. 165. Bankers of a company are not officers of the company within the terms of this section. *In re Imperial Land Company of Marseilles*, 39 L. J., Ch. 331.

(*r*) *Id.* s. 166.

(*s*) *Id.* s. 167.

(*t*) Gen. Ord. 11th November, 1862, r. 51.

altogether voluntary, if it should appear to the liquidators that a past or present director, manager, officer or member, has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court, to prosecute such offender, and all expenses properly incurred in the prosecution will be payable out of the assets of the company, in priority to all other liabilities (*u*).

The application to the Court for the purpose of instituting the prosecution must be by petition (*x*). In the above provisions a liquidator abusing his trust or office is included (*y*).

(*u*) 25 & 26 Vict. c. 89, s. 168.

(*x*) Gen. Ord. 11th November, 1862, r. 51.

(*y*) 25 & 26 Vict. c. 89, s. 165.

## CHAPTER LIV.

## ATTACHING FUNDS IN BANKER'S HANDS.

By the Judicature Act, 1875, Ord. XLV. r. 2, it is enacted that "the Court or a judge may, upon the *ex parte* application of a judgment creditor, either before or after oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a judge or an officer of the Court, as such Court or judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt."

This is taken from sect. 61 of the C. L. P. Act, 1854. A customer's balance may be attached by a judgment creditor of the customer to answer his judgment debt (a).

By Rule 3, "Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court or judge shall direct, shall bind such debts in his hands" (b).

(a) *Seymour v. Brecon Corporation*, 29 L. J., Ex. 243; *In re Pritchard*, 2 De G., F. & J. 354. See also judgments in *Mayor of London v. London Joint Stock Bank*, 6 App. Cas. 393. A garnishee order nisi does not create a charge until service of it on the garnishee. *Hamer v. Giles*, 11 Ch. D. 942; 48 L. J., Chanc. 508.

(b) The debt must be an absolute and not a conditional one. *Howell v. Metropolitan District Railway*, 19 Ch. D. 508.

By Rule 4, "If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt."

By Rule 8, "Payment made by, or execution levied upon, the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed" (a).

In the city of London funds in the possession of banking partnerships, other than banking corporations, are liable to the process of foreign attachment, as existing in the Mayor's Court, though the process must be strictly pursued according to the custom. Fictitious summonses and returns, as formerly resorted to, will render the suit invalid (b). This process is much more extensive in its operation within the ambits of the city jurisdiction, than an attachment of debts under the provisions of the Judicature Act already mentioned (c). Under that statute, it will be observed, debts cannot be attached until judgment has been obtained; whereas, under the custom of the city, debts are attachable for the purpose of compelling the defendant to appear and put in bail to the action in the Lord Mayor's Court (c). Until a city attachment has been dissolved or withdrawn, a banker cannot part with or pay away funds belonging to his customers (c). As regards banking corporations, the recent case decided in the House of Lords (b) has now clearly settled that this process is a

(a) See *Howell v. Metropolitan District Railway*, supra.

(b) *Mayor of London v. London Joint Stock Bank*, supra.

(c) See Brandon on Foreign Attachment.

personal one, and cannot be applied to a corporation aggregate.

Funds of foreign governments, in the hands of bankers as their agents for the payment of the dividends on foreign bonds or stocks, are not attachable at the suit of the creditors of such governments (*d*).

Accounts kept by collectors or receivers of government taxes with bankers may be seized under a writ of extent at the suit of the Crown against the bankers (*e*). So, an extent may be issued against a banker, with whom a collector has deposited promissory notes or bills of exchange taken by him in payment of taxes (*e*). If a collector pays moneys received by him for taxes to a third party who pays the same into his private account with his bankers, and the bankers have knowledge of the fact that the moneys are the moneys of the Crown, an extent may issue against the bankers for the recovery of such moneys (*f*). If by the terms of the deposits interest is payable by the bankers, that is also recoverable by the Crown (*e*).

Recently it has been alleged that there is a custom among bankers who have discounted their customer's bill of exchange, upon the acceptors suspending payment before their maturity, to call upon their customers to take them up, or, failing to do so, to retain their balances in their hands to meet the liability on the current bills (*g*). The custom has been denied, and its validity in point of law may be open to considerable doubt. The case in which the custom was alleged to exist was compromised and apparently in favour of the customer and against the claim, and consequently no decision was given (*g*).

By the National Debt Act, 1870, consols and other public stock are not liable to foreign attachment by the custom of London or otherwise (*h*).

(*d*) *Wadsworth v. The Queen of Spain*, 17 Q. B. 171.

(*e*) *Reg. v. Adams*, 2 Exch. 299.

(*f*) *Reg. v. Ward*, 2 Exch. 301, n.

(*g*) *Agra and Masterman's Bank, Limited v. Hoffman*, 13 W. R. 226 : 11 L. T., N. S. 701; 34 L. J., Chanc. 285, coram Stuart, V.-C.

(*h*) 33 & 34 Vict. c. 71, s. 10.

## CHAPTER LV.

## WINDING-UP AND DISSOLUTION OF BANKING COMPANIES.

WE propose in this chapter to state the general outline of the law applicable to the winding-up of banking copartnerships and companies, unable to meet their engagements or to carry out the objects for which they were promoted. For more detailed information, and for the cases decided on the various sections of the Companies Act, the reader must be referred to those works expressly dealing with Company law.

Banking copartnerships constituted under the 7 Geo. IV. c. 46, or under the 3 & 4 Will. IV. c. 98, or, as to Ireland, under the 6 Geo. IV. c. 42, and not registered as limited or unlimited banking companies under the Companies Act of 1862, must be wound up under the provisions of that statute as unregistered companies (*a*).

And banking companies formed under the 7 & 8 Vict. c. 113, or under the 21 & 22 Vict. c. 91, as limited, and registered under the 20 & 21 Vict. c. 49, or formed and registered under the Companies Act of 1862, must be wound up under the provisions of the last-mentioned act (*b*).

The winding-up will be by a compulsory process, under the direct action and control of the Court of Chancery (*c*), or by a voluntary process aided by liquidators appointed by the companies (*d*). But companies which have not been registered as limited or unlimited banking companies, under the Companies Act of 1862, cannot avail themselves

(*a*) 25 & 26 Vict. c. 89, s. 199.

(*b*) *Id.* ss. 179, 196.

(*c*) *Id.* s. 79.

(*d*) *Id.* s. 129.

of the voluntary process of winding-up—they must be wound up by the Court of Chancery (*e*).

Reversing the order of time in which these banks were established, we will first consider the winding-up of the companies formed and registered under the Companies Act of 1862, as many of its provisions will tend to elucidate the principles applicable to the winding-up of previously existing companies; secondly, companies formed under the 7 & 8 Vict. c. 113, or under the 21 & 22 Vict. c. 91, as limited, registered under the 20 & 21 Vict. c. 49, and re-registered under the Companies Act of 1862; and thirdly, copartnerships formed under the 7 Geo. IV. c. 46, and the 3 & 4 Will. IV. c. 98, and not registered under the 20 & 21 Vict. c. 49, or under the Companies Act of 1862,—and the respective rights and liabilities of the members and contributories of these companies.

With regard, then, to the winding-up of limited banking companies formed under the Companies Act of 1862, it is to be remembered that the liability of the members is fundamentally and constitutionally limited to the amount unpaid on their respective shares (*f*); consequently, if the shares in these banking companies have been fully paid up, there will be no liability on the part of a past or a present member to contribute to the debts of the company on its being wound up. On the other hand, if the shares have not been fully paid up, a past or a present member may be called upon to contribute to the debts and liabilities of the company the amount remaining unpaid on his shares, subject to certain conditions and limitations (*g*). The conditions are,—first, that the person has only ceased to be a member within the year; next, that the debts must have been contracted before he ceased to be a member; and, thirdly, that the present members are unable to satisfy the contributions required to discharge the debts of the com-

(*e*) 25 & 26 Vict. c. 89, s. 199 (2).

(*f*) *Id.* s. 7.

(*g*) *Id.* s. 38 (1).

pany (*h*). A member will not be liable to contribute, if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up of the company (*i*). The commencement of the winding-up for this purpose is the time when the petition was presented to the Court of Chancery in the case where it is compulsory (*k*), and where it is voluntary, the time when the resolution of the company authorizing the winding-up was passed (*l*). Members will not be entitled to set off dividends and profits due to them as such against the claims of the creditors of the company, or to enter into competition with creditors, although on the final adjustment of their rights amongst themselves, as contributories, their claims in respect of dividends or profits may be taken into account (*m*).

With these qualifications, members present and past of limited banking companies will be liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities, and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves (*n*).

*Compulsory Winding-up.*—A compulsory winding-up may be resorted to under the following circumstances, viz. :—

- (1.) Whenever the company has passed a special resolution requiring the company to be wound up by the Court (*o*).

(*h*) 25 & 26 Vict. c. 89, s. 38. *In re Barned's Bank, Helbert v. Banner*, L. R., 5 H. L. 28; 40 L. J., Ch. 410.

(*i*) *Id.* s. 38 (1).

(*k*) *Id.* s. 84.

(*l*) *Id.* s. 130.

(*m*) *Id.* s. 38 (7).

(*n*) *Id.* s. 38.

(*o*) *Id.* s. 79. As to special resolutions, see ante, p. 417. The statute also specifies another reason, viz., whenever the members are reduced in number to less than seven, but as this is not likely to occur in a limited banking company, consisting of a numerous body of shareholders, it is not stated in the text.

- (2.) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year (*p*).
- (3.) Whenever the company is unable to pay its debts (*p*).
- (4.) Whenever the Court is of opinion that it is just and equitable that it should be wound up (*p*).

A company will be deemed unable to pay its debts:—

- (1.) Whenever a creditor, to whom the company is indebted in a sum exceeding 50*l.*, has served on the company, by leaving at its registered office, a written demand requiring the company to pay his debt, and the company has for three weeks neglected to pay the debt, or to secure or compound for the same, to the reasonable satisfaction of the creditor (*q*).
- (2.) Whenever an execution on a judgment, decree or order obtained by a creditor against the company has been returned unsatisfied, wholly or in part (*q*).
- (3.) Whenever it is proved to the satisfaction of the Court, that the company is unable to pay its debts (*q*).

A company, however, will not be regarded as unable to pay its debts simply because it has not paid a debt which it disputes, and which the creditor has not established by action (*r*).

In the case of a banking company, the Lord Justice Turner has expressed an opinion that a winding-up by the Court, rather than a voluntary winding-up, should be adopted in cases of enormous magnitude, where vast interests are at stake—where the most ample powers which the law has given must be required to be exercised—where

(*p*) 25 & 26 Vict. c. 89, s. 79.

(*q*) *Id.* s. 80. See Buckley, pp. 164—175.

(*r*) *Re Catholic Publishing Company*, 33 L. J., Chanc. 325; *In re Imperial Guardian, &c. Society*, L. R., 9 Eq. 447; *In re King's Cross Industrial Dwellings Company*, L. R., 11 Eq. 149.

there have been transactions justifying, if not requiring, investigation—where it may be doubtful whether the property of the shareholders will answer the liabilities, and where there is danger to the creditors of the shareholders escaping from their liabilities (s).

*Petition.*—A winding-up order will be obtained upon a petition presented to the Court of Chancery by the company, or by any one or more creditor or creditors or contributory or contributories, or by all or any of the above parties together or separately, and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory (t). A holder of scrip certificates may petition for a winding-up order, on his clothing himself with the character of a contributory (u). But a holder of fully paid-up shares must show special circumstances to entitle him to an order (x).

*Restraining Actions against the Company.*—The Court may, after the petition has been presented, upon the application of the company, or of a creditor or of a contributory, restrain proceedings in actions or suits against the company, and appoint a provisional liquidator (y). Applications must now be made to the Court where the actions are pending (z).

When a winding-up order has been made, the act provides that no suit or action shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as it may impose (a).

(s) *In re Northumberland and Durham District Banking Company*, 2 De G. & J. 378.

(t) 25 & 26 Vict. c. 89, s. 82. See Buckley, pp. 177—182.

(u) *Ex parte Ellis*, 34 L. J., Chanc. 237; 11 Jur., N. S. 211.

(v) 11 Jur., N. S. 4.

(y) 25 & 26 Vict. c. 89, s. 85. See Buckley, pp. 183—194.

(z) Under sect. 24, subs. 5 of Judicature Act, 1873, and sect. 11, subs. 1 of Judicature Act, 1875. And see *People's Garden Company*, 1 Ch. D. 44; *Rose v. Garden Lodge Company*, 3 Q. B. D. 235; *In re Artistic Colour Printing Company*, 11 Ch. D. 502.

(a) 25 & 26 Vict. c. 89, s. 87.

The Court is also empowered, at any time after an order has been made for winding-up a company upon the application of a creditor or contributory, to stay proceedings under the winding-up order, either altogether or for a limited time (*b*). The Court may dismiss the petition with or without costs, or adjourn the hearing, or may make an interim or any other order that it may deem just under the circumstances of the case (*c*).

The Court is to consult the wishes and interests of the creditors and contributories in all matters connected with the winding-up of the company (*d*).

*Forwarding Order to Registrar.*—A copy of the winding-up order is to be forthwith forwarded by the company to the Registrar of Joint Stock Companies, who must make a minute of it in his books relating to the company (*e*).

Under a compulsory winding-up, the Court has the power of appointing official liquidators for the purpose of assisting it in the conduct of the business. The powers and duties of official liquidators will be considered with those of liquidators appointed under a voluntary winding-up—to which head we now proceed.

*Voluntary Winding-up.*—A banking company may be wound up voluntarily in the events and under the circumstances following, viz. :—

- (1.) Whenever the period fixed for its duration by the articles of association has expired, or when it is provided by the articles that the company is to be dissolved, and it has passed a resolution in general meeting requiring the company to be wound up voluntarily (*f*).

(*b*) 25 & 26 Vict. c. 89, s. 89; Buckley, 205, 206.

(*c*) *Id.* s. 86.

(*d*) *Id.* s. 91.

(*e*) *Id.* s. 88.

(*f*) *Id.* s. 129; Buckley, 253—255.

(2.) Whenever the company has passed a special resolution for that purpose (*f*).

(3.) Whenever it has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same (*g*).

An extraordinary resolution (*g*) for this purpose will be when notice of the resolution has been given and confirmed in the same manner as a special resolution (*h*).

The winding-up commences to operate from the time when the resolution was passed (*i*). It will not preclude a creditor from afterwards applying to the Court to have the company wound up by the Court (*k*). Notice of the special or extraordinary resolution, as the case may be, must be advertised in the Gazette (*l*). The company thenceforth ceases practically to carry on its business, and transfers of shares, unauthorized by the liquidators, will be void, and the status of the members cannot be altered in their relations to the company (*m*). The corporate character of the company, with its incorporated powers, continues until formally dissolved (*m*). When the resolution has been passed and confirmed for winding-up the company voluntarily, the next step will be the appointment of one or more liquidators (*n*). On their appointment the powers of the directors determine, unless continued with the sanction of the company or the liquidators (*n*). Their duties and powers will be considered in connection with those of the official liquidators. The costs of a voluntary winding-up, including the remuneration of the

(*f*) 25 & 26 Vict. c. 89, s. 129; Buckley, 253—255.

(*g*) *Id.* s. 129.

(*h*) See ante, p. 417, for the mode of passing special resolutions.

(*i*) 25 & 26 Vict. c. 89, s. 130; Buckley, 255; *Dawes' case*, L. R., 6 Eq. 232; *In re Smith, Knight & Co.*, *ib.* 238; L. R., 4 Ch. 20.

(*k*) *Id.* s. 145. See Buckley, 266—269.

(*l*) *Id.* s. 132.

(*m*) *Id.* s. 131; Buckley, 256.

(*n*) *Id.* s. 133; Buckley, 257—260.

liquidators, will be payable out of the assets of the company (*o*).

*Winding-up under Supervision of the Court.*—When a company is being wound up voluntarily, the proceeding may be transferred to and adopted by the Court of Chancery, and completed under its supervision. This course will be taken when the voluntary winding-up is not proceeding satisfactorily, or is inefficient in its working for the interests of creditors or contributories (*p*).

*Liquidators.*—The Court of Chancery, in winding-up a company under its control, generally appoints an official liquidator, who ought to be an entirely disinterested person—neither a creditor nor a shareholder of the company (*q*).

In all proceedings he will be described as the official liquidator of the particular company, and not in his individual name (*r*). His duty will be to take possession of all the property of the company, and perform such other acts in reference to the winding-up as the Court may impose upon him (*r*). His powers will be to bring or defend actions or suits, or institute prosecutions in the name or on behalf of the company (*s*), to realize the property of the company (*s*), to prove in bankruptcy (*s*), to draw, accept or indorse any bill or promissory note in the name and on behalf of the company, to take out letters of administration to any deceased contributory, and do and execute all matters that may be necessary for winding-up its affairs and distributing its assets (*s*). These powers may be exercised with or without the sanction or intervention of

(*o*) 25 & 26 Vict. c. 89, s. 144.

(*p*) *Id.* s. 147. See *Imperial Bank of China*, L. R., 1 Ch. 339; Buckley, 270; *In re London and Mercantile Discount Company*, L. R., 1 Eq. 277; *In re Beaujolais Wine Company*, L. R., 3 Ch. 15.

(*q*) *In re Northumberland and Durham District Banking Company*, 2 De G. & J. 508.

(*r*) 25 & 26 Vict. c. 89, s. 94.

(*s*) *Id.* s. 95.

the Court of Chancery, if the Court has made an order to that effect (*t*). Under a voluntary winding-up liquidators are appointed by the company, and the powers given to official liquidators may be exercised by them, without the sanction of the Court (*u*). They have power to settle the list of contributories, and the list will be *prima facie* evidence of the liability of the persons named therein as contributories (*u*). Before ascertaining the sufficiency of the assets, they may call upon the contributories to pay to the extent of their liability, for the liquidation of the debts of the company (*x*), and in making calls take into consideration the liability that some may fail to pay their respective proportions (*x*). They are also to adjust the rights of the contributories amongst themselves (*x*). The liquidators are also empowered, with the sanction of the Court, where the company is being wound up under its control, or subject to its supervision, and with the sanction of an extraordinary resolution of the company, when it is being wound up voluntarily, to compromise calls, liabilities and claims between the company, its contributories or debtors (*y*), and to pay or settle with its several classes of creditors in full or otherwise (*y*). The Court of Chancery will not compel a liquidator against his judgment to sanction a compromise of debts (*z*).

These arrangements will be binding on the company and creditors, subject to the right of creditors to appeal to the Court within three weeks of their completion (*a*). The Court, in sanctioning a compromise, exercises a judicial discretion, and will not direct the official liquidators to conclude a compromise without the means of itself forming an opinion as to the propriety of the terms of the compro-

(*t*) 25 & 26 Vict. c. 89, ss. 95, 96; *Turquand v. Kirby*, L. R., 4 Eq. 123.

(*u*) *Id.* s. 133; *Buckley*, 258.

(*x*) *Id.* s. 133.

(*y*) *Id.* ss. 159, 160; Gen. Ord. rr. 49, 50. This power extends to a general compromise with the creditors as a class. *Commercial Bank Corporation of India and the East*, L. R., 8 Eq. 231.

(*z*) *In re East of England Banking Company*, L. R., 7 Ch. 309.

(*a*) 25 & 26 Vict. c. 89, ss. 136, 137.

mise (b). Therefore, where official liquidators applied to the Court to sanction a compromise, which had been proposed by a body of thirty-five shareholders, to pay among them an aggregate sum in discharge of their liabilities as shareholders, but without disclosing to the Court the particulars or the data of such compromise, the Court refused the application, although it was sworn that the compromise was founded upon details of property, and circumstances which, if divulged, would operate detrimentally to the thirty-five shareholders and to the interests of the company (b).

The liquidators are also empowered, with the like sanction of the Court or company, where the property of the company is proposed to be sold to another company, to accept shares in such other company as the consideration of the purchase-money (c). Official liquidators of a bank entered into a provisional contract with B. to sell him property belonging to the bank for 16,000*l.* At a meeting before the chief clerk in chambers, this contract was submitted for the approval of the judge, when it was objected to by the creditors, who stated that C., another purchaser, would give a higher price, and who afterwards offered 17,600*l.*, it was held that the chief clerk was right in not adopting the provisional contract with B., if a larger sum could be obtained, and the official liquidators were directed by the Court to carry out the contract with C. for 17,600*l.* (d).

The liquidators may appeal to the Court to determine any question which may arise in the course of the exercise of their powers, on a voluntary winding-up (e). They have power also to call general meetings of the company, and if the winding-up should be prolonged beyond twelve

(b) *Northumberland and Durham District Bank Company, Ex parte Totty*, 29 L. J., Chanc. 702.

(c) 25 & 26 Vict. c. 89, s. 161; Buckley, 315—320.

(d) *In re Northumberland District Banking Company*, 9 W. R. 584; 5 L. T., N. S. 633.

(e) 25 & 26 Vict. c. 89, s. 138.

months, they must at the end of each year lay before the meeting an account showing their acts and dealings and the manner in which the winding-up has been conducted during the preceding year (*e*). In the case of a vacancy in the office, another liquidator may be appointed, and the Court may remove any liquidator on due cause shown (*f*).

Delinquent liquidators, as we have seen, will be liable to criminal prosecution (*g*).

We proceed to mention the winding-up of the second and third classes of banking companies.

*Winding-up of Companies existing before 1862.*—Banking companies formed under the 7 & 8 Vict. c. 113, or under the 21 & 22 Vict. c. 91, as limited, and respectively registered under the 20 & 21 Vict. c. 49, and the Companies Act of 1862, will be wound up under the latter act (*h*), and all its provisions with regard to banking companies, formed and registered since the 2nd of November, 1862, will apply, with this exception, that persons liable at law or in equity, to contribute to the payment of the debts or liabilities of the company contracted prior to registration, and for the adjustment of the rights of the members among themselves, will be contributories in respect of such debts and liabilities (*i*). The Court of Chancery may, when the petition for the winding-up has been presented, on the application of a creditor, restrain further proceedings in actions or suits, as well against contributories as against the company (*k*), and legal proceedings cannot afterwards be commenced against contributories, without the special leave of the Court (*l*).

The members of unlimited banking companies registered under the 20 & 21 Vict. c. 49 (*m*), as limited banking com-

(*e*) 25 & 26 Vict. c. 89, s. 138.

(*f*) *Id.* ss. 140, 141; *In re Sir John Moore Gold Mining Company*, 12 Ch. D. 325.

(*g*) 25 & 26 Vict. c. 89, s. 165, ante, p. 486.

(*h*) *Id.* ss. 179, 180.

(*i*) *Id.* s. 196.

(*k*) *Id.* s. 197.

(*l*) *Id.* s. 198.

*m.* Sect. 5.

panies, on winding-up, will be liable beyond the amount paid up on their respective shares for the debts of the company contracted or incurred previously to registration (*n*). The effect of registration in these instances is to make the company limited *quoad* liabilities incurred after registration, but unlimited *quoad* debts previously contracted (*n*).

So banking companies established under the 7 & 8 Geo. IV. c. 46, or under the 3 & 4 Will. IV. c. 98, or banking companies not registered as limited or unlimited, under the Companies Act of 1862, will be wound up as unregistered companies (*o*) under that act, with this exception, that no such company can be wound up voluntarily, or subject to the supervision of the court (*p*). The circumstances under which such a company may be wound up are:—

- (1.) Whenever it is dissolved, or has ceased to carry on business, or is carrying on business merely for the purpose of winding-up (*q*).
- (2.) Whenever it is unable to pay its debts (*q*).
- (3.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up (*q*).

The circumstances under which an unregistered company will be considered as unable to pay its debts are similar to those already detailed in regard to registered companies (*r*). The Court of Chancery has a similar power of staying actions commenced by creditors against the company or contributories, on the presentation of the winding-up petition (*s*), and of prohibiting the commence-

(*n*) *Ex parte Stevenson*, 32 L. J., Chanc. 96; *Garnett Gold Mining Company of America v. Sutton*, 13 W. R. 412—Exch. Cham. See Lind. 1445, and compare *Fountain's case*, 11 Jur., N. S. 553. As to the liability of members of companies registered under the Act of 1862, see ante, p. 401.

(*o*) 25 & 26 Vict. c. 89, s. 199.

(*p*) *Id.* s. 199 (2).

(*q*) *Id.* s. 199 (3).

(*r*) *Id.* s. 199 (4); and see ante, p. 493.

(*s*) *Id.* s. 201.

ment of actions against contributories without its leave (*t*). The rights and liabilities of contributories to creditors and amongst themselves, under the winding-up, remain unaffected by recent legislation as to these copartnerships (*u*). Having seen when and under what circumstances banking copartnerships and companies may be wound up, it becomes now necessary to point out the parties who are liable as contributories, and the nature of their liability, and the mode of enforcing it. These matters will be the subject of the concluding portion of this chapter.

*Contributories generally.*—A contributory is defined, by the Companies Act of 1862, to be every person liable to contribute to the assets of the company, in the event of the same being wound up; and in all proceedings for determining the liability of contributories, any person alleged to be a contributory (*x*). Generally, persons who are, or who ought to be, members in accordance with the provisions of the deed of settlement, or the regulations of the articles of association of the company, will be contributories, either in their own right or as representing others. Illustrations taken from the decisions of the cases will be the best guides in determining who are contributories in the absence of a more specific definition than is afforded by the statute (*y*).

It must be carefully borne in mind, with reference to the cases of contributories, that the liabilities of contributories are not always equal; each contributory is not always liable for the whole expenditure of the company; in the cases respecting contributories, all that is decided, when the Court orders that such a person shall be placed on the list of contributories of the company, is, not that he is necessarily in precisely the same situation, with respect to

(*t*) 25 & 26 Vict. c. 89, s. 202.

(*u*) *Id.* s. 200.

(*x*) *Id.* s. 74.

(*y*) See Buckley, 155.

pecuniary responsibility, as every other person who has been or may be placed upon the list, but only that in respect of shares that he holds or has held, (as his case may be,) he is liable to bear some share or other in aid of the liabilities of his fellow members of, or the debtors to, the company. What he must eventually pay, as his proportion of the losses, remains for subsequent investigation, and the result depends on the number of shares he has held, on the mode in which they were transferred to him, the time during which he has held them, and a variety of other circumstances, and combinations of circumstances, differing in almost each particular instance (z).

The 7 Geo. IV. c. 46, s. 13, has no bearing on the question who are contributories.

*Applicants and Allottees.*—It is not necessary that a person should be a shareholder to make him a contributory; all that is required is that there should have been a concluded agreement to take shares under section 23; nor is it necessary that the agreement should have been in writing (a). In an ordinary case of an application for shares, to constitute such an agreement, the letter of application must generally be followed by an allotment which must be communicated to the applicant (b). But a person may be a contributory if he has agreed to take shares, even although there has been no allotment made to him (c) or he has no notice of it (d).

*Bankrupt's Trustee.*—A contributory becoming bankrupt before or after he has been placed on the list of contributories, his trustee will be deemed to be a contributory, and

(z) See *per* Lord Cottenham, C., in *Ex parte Mansfield (Earl)*, 2 Mac. & G. 671.

(a) *Cookney's case*, 26 Beav. 6; *Reese River Silver Mining Company v. Smith*, L. R., 4 H. L. 64; *Bloxam, Ex parte*, 33 L. J., Chanc. 574; *Buckley*, 35—69.

(b) *Pellat's case*, L. R., 2 Ch. 527; *Hobbs' case*, L. R., 4 Eq. 9; *Ward's case*, L. R., 10 Eq. 659.

(c) *Bird's case*, 4 De G., J. & S. 200.

(d) *Adams' case*, L. R., 13 Eq. 474; *Fowler's case*, L. R., 14 Eq. 316.

may be called upon to admit proofs against his estate, or to allow payments out of his assets in due course of law of any moneys due from the bankrupt in respect of his liability to contribute, and the estimated value of his liability to future calls may be proved against his estate (*e*).

*Directors.*—As to when directors, acting without the necessary qualification in respect of shares prescribed by the memorandum or articles of association, will make themselves liable as contributories in respect of such shares, see p. 444.

*Executors and Administrators.*—On the death of a contributory either before or after being placed on the list of contributories, his personal representatives, heirs and devisees will be liable in due course of administration to contribution, and his personal representatives, heirs and devisees will be the contributories (*f*).

Executors holding shares merely as such, and *never having taken to them* as beneficial holders, are only liable to the extent of the assets of those whom they represent; the liability is that of the estates of the original holders (*g*).

*Females marrying.*—A female marrying either before or after being placed on the list of contributories, her husband will during the marriage be liable to contribute the same sum as she would have been liable to contribute had she not married, and he will be deemed the contributory (*h*).

A married woman, having separate estate, may make herself a shareholder in her own right, provided the contract was entered into on the credit of that estate, and that the company's deed of settlement does not exclude married women from becoming shareholders (*i*). But it would seem

(*e*) 25 & 26 Vict. c. 89, s. 77 and s. 75.

(*f*) *Id.* s. 76.

(*g*) *Evans v. Coventry*, 25 L. J., Chanc. 499.

(*h*) 25 & 26 Vict. c. 89, s. 78.

(*i*) *Mrs. Mathewman's case*, L. R., 3 Eq. 781.

her husband is liable to be put on the list of contributories with her (*k*), unless she was known by the company to be a married woman, and she, and not her husband, was accepted as shareholder (*l*). If she has no separate estate, the husband, as a general rule, will be liable even where she has bought the shares with his consent and knowledge (*m*). If, on the other hand, she is known to be a married woman, and the company, notwithstanding, deal with her as a principal, and the steps necessary by the deed of settlement to constitute the husband a member have not been taken, he would not, it seems, be liable, nor would the wife (*n*).

*Infants*.—An infant, it would seem, could not be put on the list of contributories unless his being put there should happen to be for his benefit, as where there are surplus assets (*o*).

*Legatees*.—If shares have been bequeathed and the executor has assented to the bequest, and the legatee has accepted it and been accepted by the company as a shareholder, the latter, and not the executor, is liable as a contributory (*p*).

*Principals and Agents*.—A person taking shares, though intending to do so as an agent only for another, will be personally liable as a contributory, unless he states at the time that he accepts only as agent (*q*). But if he does so and is in fact the authorized agent of that other he is not liable but his principal (*r*).

(*k*) *Luard's case*, 1 De G., F. & J. 533; but see *In re London, Bombay and Mediterranean Bank*, 18 Ch. D. 581, and ante, pp. 437, 438.

(*l*) *Angas's case*, 1 De G. & S. 560.

(*m*) *D'Useley's case*, 18 Sol. J. 282.

(*n*) *Ex parte Rhodes*, 7 W. R. 510.

(*o*) See Lindley, 1356.

(*p*) See *Keene's Executors' case*, 3 De G., M. & G. 272; *Crossfield's case*, 2 ib. 128.

(*q*) *Bird, Ex parte*, 33 L. J., Bank. 49.

(*r*) *Barrett's case*, 4 D. J. & S. 200.

*Trustees.*—The trustee is liable to be put on the list of contributories and not the *cestui que trust*, nor is his liability limited to the amount of the trust estate (*s*). A trustee of course has his remedy against the *cestui que trust* for indemnification (*t*).

*Purchasers by means of Misrepresentation.*—Persons induced to purchase shares in a company through fraud (provided the fraud is in law the fraud of the company), can as against the company repudiate their shares (*u*) ; but as against creditors when the winding-up has commenced, it is now finally settled no such repudiation can be made, but that they must be put on the list of contributories (*v*).

*Scrip-holders.*—A mere holder of scrip will not necessarily be liable as a contributory ; whether he will be so or not depends on whether he holds the scrip as principal or as agent for another. Therefore, where London bankers had in their hands, at the date of the winding-up order, shares belonging to their foreign correspondents, on which they were in the habit of receiving the dividends, they were held not to be contributories (*x*).

*List of Contributories.*—As soon as practicable after the order for winding-up has been made, the official liquidator settles the list of the contributories (*y*). In settling this list a distinction must be made between persons contributories in their own right and persons who are representatives of others or liable for their debts (*z*).

In the case of a personal representative of a deceased

(*s*) *Barrett's case*, *supra* ; *Hoare's case*, 2 J. & H. 229 ; *Leifchild's case*, L. R., 1 Eq. 231 ; *Muir v. City of Glasgow Bank*, 4 App. Cas. 337.

(*t*) *Cruse v. Paine*, L. R., 6 Eq. 641 ; *James v. May*, L. R., 6 H. L. 328.

(*u*) *Kish v. Central Railway Company of Venezuela*, L. R., 2 H. L. 99.

(*v*) *Oakes v. Turquand*, L. R., 2 H. L. 325 ; *Stone v. City Bank*, 3 C. P. D. 282 ; *Cargill v. Bower*, 10 Ch. D. 502.

(*x*) *Ex parte Finlay*, 26 Beav. 182.

(*y*) 25 & 26 Vict. c. 89, s. 98 ; Gen. Ord. rr. 29—31. See *Anderson's case*, 17 Ch. D. 373.

(*z*) *Id.* s. 99.

contributory being placed on the list, it will not be necessary to add his heirs or devisees. The heirs or devisees may, however, be added as and when the Court may think fit (a).

On a voluntary winding-up the liquidator appointed by the company has similar powers of settling the list, and the list will be *prima facie* evidence of the liability of the persons named therein as contributories (b). Persons dissatisfied with the insertion of their names on the list may appeal (c).

*Past Members.*—There is only one list of contributories as past members (called the B list), and all persons ceasing to be members within the year are liable to be put on it as soon as it appears that the contributions of present members will be insufficient, and that the debts to be paid were contracted previous to their retirement (d). So a past member of a limited banking company who has transferred his shares within a year of the winding-up is liable (if his transferee has not paid the unpaid capital on his shares, and if the present members' contributions are insufficient) to contribute, together with other past members, to the assets of the company to the full amount of the debts which were due at the date of the transfer, and which were still unpaid at the date of the winding-up, but from this amount must be deducted the dividends already received from the present members (e). Each past shareholder is liable to contribute to such unpaid debts, to the extent of the amount unpaid on the shares by his transferee, *pari passu* with all the other past shareholders who are liable for the same debts, and cannot require that the past members who transferred their shares after his transfer

(a) 25 & 26 Vict. c. 89, s. 99.

(b) *Id.* s. 133 (9).

(c) *Id.* s. 124.

(d) *Id.* s. 38 (2), (3). See *Brett's case*, L. R., 6 Ch. 800; *Webb v. Whiffen*, L. R., 5 H. L. 711.

(e) *In re Oriental Commercial Bank*, L. R., 7 Ch. 200.

was registered should be exhausted before any call is made on him (c). The funds contributed by the B list of shareholders become part of the general assets of the company, and are not to be applied, preferentially or exclusively, to the payment of those debts which were incurred before the B shareholders retired (d). Compromises with some of the existing members, effected by liquidators with the sanction of the Court, will not operate as a release to past members (e).

*Rectifying Register on settling List.*—On settling the list of contributories the Court has likewise power to rectify the register of the members of the company, under the Companies Act, 1862, s. 35, whenever parties have been improperly entered or omitted (f).

*Proof of Debts.*—For the purpose of ascertaining the debts of the company, the creditors are called upon, by the official liquidator, to come in and prove their debts or claims against the company. All debts payable on a contingency, and all claims against the company present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company; a just estimate being made, so far as is possible, of the value of all such debts or claims as may be contingent or sounding only in damages (g).

*Making Calls on Contributories and Right of Set-off.*—The Court of Chancery is empowered to make calls on the contributories settled on the list to the extent of their liability, for payment of the debts of the company and the costs, charges and expenses of winding-up, and for the adjustment

(c) *In re Oriental Commercial Bank*, L. R., 7 Ch. 200.

(d) *Webb v. Whiffin*, L. R., 5 H. L. 711.

(e) *In re Barned's Bank*, L. R., 5 H. L. 28; *Hudson's case*, L. R., 12 Eq. 1; *Helbert v. Banner*, L. R., 5 H. L. 28.

(f) 25 & 26 Viet. c. 89, ss. 35, 98, ante, p. 412. And see *In re London, Hamburg and Continental Exchange Bank*, L. R., 2 Eq. 226; 2 Ch. 431, as to when the Court will exercise this power.

(g) *Id.* s. 158; Gen. Ord. rr. 20–28. See Buckley, pp. 280–311.

of the rights of the contributories amongst themselves, and in making a call the Court may take into consideration the probability that some of the contributories may fail to pay their proportions (*j*). Making a call is within the discretion of the Court; and the call will not be made if the Court is satisfied that there are sufficient assets in the hands of the liquidators; but it will be made if there are only outstanding assets, the realization of which is doubtful both as to amount and time (*k*). A liquidator under a voluntary winding-up has similar powers (*l*). In making an order for payment of a call on a contributory, when the company was *not* limited, it was held by Malins, V.-C., that the contributory might be allowed to set off any moneys due to him from the company on any independent dealings or contracts with the company (*m*); but Mr. Justice Fry has refused to follow this decision, and has decided that, in the winding-up of a company with unlimited liability, a contributory has no right to set off debts due to him by the company against calls made on him by the liquidator (*n*). So, too, where the company is limited, and that whether the winding-up is voluntary or compulsory (*o*). But when all the creditors of the company, whether limited or unlimited, have been paid in full, moneys due on any account whatever to any contributory from the company may be set off against any subsequent call or calls (*p*). An order for a call is conclusive evidence that the call is due, and all other pertinent matters stated in the order are to be taken to be truly stated as against all persons (*q*), with the exception of

(*j*) 25 & 26 Vict. c. 89, s. 102.

(*k*) *In re Barned's Bank*, L. R., 5 H. L. 28.

(*l*) 25 & 26 Vict. c. 89, s. 133 (9).

(*m*) *Gibbs and West's case*, L. R., 10 Eq. 312; *Grissell's case*, L. R., 1 Ch. 528.

(*n*) *Ex parte Branwhite*, 48 L. J., Ch. 463; 40 L. T. 652.

(*o*) *Grissell's case*, L. R., 1 Ch. 528; *In re Whitehouse*, 9 Ch. D. 595. As to the effect of sect. 10 of Judicature Act, 1875, see *Gill's case*, 12 Ch. D. 755.

(*p*) 25 & 26 Vict. c. 89, s. 101. *Gibbs and West's case*, L. R., 10 Eq. 312.

(*q*) *Id.* s. 106.

proceedings taken against the real estate of a deceased contributory, when the order will be only *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time when the order was made (*q*). A right of appeal is however given against any order that may be made or that is sought to be enforced against a contributory or his representatives (*r*).

*Nature of Liability.*—Calls made on the winding-up of a banking company, formed under the Companies Act of 1862, will create a specialty debt due from the contributory, and will not be barred till the lapse of twenty years (*s*).

*Extent of Liability undertaken by Transferee.*—As a general rule the liability of the transferor is, as between the company, the transferee and himself, transferred to the transferee by the transfer of the shares; so a transferee of shares in a banking company, established under the 7 Geo. IV. c. 46, was held liable as a contributory in respect of debts contracted as well before as after the transfer, there being no provisions in the deed of settlement of the company in any way limiting such liability (*t*).

So where the name of a person who had purchased shares in a similar banking company was after its stoppage placed on the list of contributories, but only from the date at which he made the purchase, this qualification of his liability was struck out on appeal (*u*).

*Enforcing Calls.*—The mode by which calls are enforceable is by the service of the summons of the order for the call on the contributories, or their representatives, requiring payment to be made to the official liquidator

(*q*) 25 & 26 Vict. c. 89, s. 106.

(*r*) *Id.* s. 124.

(*s*) *Cork and Bandon Railway Company v. Goode*, 13 U. B. 826. See also *Ex parte Robinson*, 6 De G., Mac. & G. 572; 26 L. J., Chanc. 95.

(*t*) *Ex parte Cape*, 2 De G., Mac. & G. 562; 22 L. J., Chanc. 601.

(*u*) *Henderson v. Henderson*, L. R., 3 H. L. 698.

of the amount therein mentioned and at a specified time, which if not complied with, an attachment or a sequestration according to the practice of the Court may be issued against the defaulters (*x*). In the case of a voluntary winding-up, application must be made by the liquidator to the Court for its aid to enforce calls (*y*).

If the representative of a deceased contributory makes default in paying a call, proceedings may be taken for administering either his personal or real estate and of compelling payment thereout of the calls (*z*).

A contributory may be arrested upon proof of probable cause being given to the Court, either before or after making the winding-up order, of his intention to quit or abscond from the United Kingdom for the purpose of evading payment of calls (*a*). An order for the payment of calls made in England may be enforced in Ireland or Scotland against contributories (*b*).

*Dissolution on Winding-up.*—In the case of a compulsory winding-up, a company will be deemed to be dissolved when its affairs have been completely wound up, and an order has been obtained from the Court of Chancery dissolving the company (*c*). The official liquidator must report the order to the registrar who will make a minute in his books of the dissolution of the company (*d*). Should he fail in reporting the order, he will incur a penalty not exceeding 5*l.* for each day of delay (*e*). In the case of a voluntary winding-up, as soon as the affairs of the company have been fully wound up, the liquidators

(*x*) 25 & 26 Vict. c. 89, s. 101; Gen. Ord. r. 35, and Forms 38, 39, 42.

(*y*) *Id.* s. 138.

(*z*) *Id.* s. 105.

(*a*) *Id.* s. 118. See *In re Imperial Mercantile Credit Company*, L. R., 5 Eq. 264.

(*b*) *Id.* ss. 122, 123.

(*c*) *Id.* s. 111; and see form of Order, No. 56, Gen. Ord., 11th Nov. 1862.

(*d*) *Id.* s. 112.

(*e*) *Id.* s. 113.

must make up an account showing the manner in which the winding-up has been conducted, and the property of the company disposed of (*f*); and the liquidators are then to call a general meeting of the company for the purpose of laying this account before the meeting, and hearing their explanations (*f'*). The liquidators are afterwards to make a return of the holding of the meeting to the registrar, and, on the expiration of three months from the date of the registration of this return, the company will be deemed to have been dissolved (*g*). If the liquidators fail to make the return, they will incur a penalty not exceeding 5*l.* for every day of default (*g*).

*Other Modes of Winding-up.*—Independently of the procedure provided by the Companies Act of 1862 for winding-up and dissolving a banking company, there is another mode which it may be useful to mention. It is usual for promoters to state in their prospectus, that they reserve to themselves the right of returning the deposits, with or without certain deductions for preliminary expenses, should the proposed capital not be subscribed, or from any other event the project should fail in their opinion to be practicable. This being a legal stipulation is binding upon all parties and is illustrated by the following case (*h*):—

The directors of a projected bank, not being able to carry out the project to its full extent, determined upon winding-up and returning the deposits. Deposits amounting in the whole to two-thirds of the subscriptions had been returned, and the remainder was in course of liquidation. A bill was filed by purchasers of shares or intended shares who were dissatisfied with the termination of the proposed bank; and it was held, that the directors were justified in the course they had taken, it being morally impossible

(*f*) 25 & 26 Vict. c. 89, s. 142.

(*g*) *Id.* s. 143.

(*h*) *Bank of Switzerland v. Bank of Turkey*, 5 L. T., N. S. 549.

that the project could have been carried out in its integrity from the events which had happened (*i*).

But if the company is not incorporated either according to foreign or English law, and therefore never in existence as a company, it cannot be wound up under the Companies Act, 1862 (*k*).

*Colonial Banks.*—The Royal Bank of Australia was wound up in Chancery under the Acts of 1848 and 1849; the petitioner for the winding-up order, a shareholder in the bank, being described in his petition as of a place out of the jurisdiction, was ordered to give security for costs before his petition could be heard; and proceedings taken in Scotland against the petitioner, in respect of a debt due from the company, were held to furnish proper ground for a winding-up on his petition (*l*).

But the Court of Chancery refused to make an order winding-up the Union Bank of Calcutta, established in India in 1829, on the ground that substantial justice could not be done in this country (*m*).

(*i*) *Bank of Switzerland v. Bank of Turkey*, 5 L. T., N. S. 549.

(*k*) *In re Imperial Anglo-German Bank*, 26 L. T., N. S. 229.

(*l*) *Ex parte Latta*, 3 De G. & S. 186.

(*m*) *Watson's case*, 3 De G. & S. 253.

## CHAPTER LVI.

## BANKRUPTCY.

In the following chapter it is proposed to state as shortly as possible the law relating to bankruptcy.

Who may be  
made bank-  
rupts.

*Who may be made Bankrupts.*—Generally speaking, every person capable of making a binding contract is also capable of being made a bankrupt, either as a trader or non-trader (*a*). By the Bankruptcy Act, 1869, Sched. 1, bankers are expressly declared to be traders liable to the bankrupt laws; and all persons, it would seem, are to be deemed bankers who act as such, although they may not keep banking houses (*b*).

Married  
women.

*Married Women.*—A married woman is not ordinarily liable to bankruptcy (*c*); but where, by the custom of London, she is trading as a *feme sole* (*d*), or where her husband is civilly dead (*e*), or in exile (*e*), or she is living apart from him under a decree of judicial separation or order of protection, she may be made a bankrupt (*f*). A married woman, however, cannot be made a bankrupt in respect of her separate estate (*g*).

(*a*) Robson on Bank. p. 99.

(*b*) *Ex parte Wilson*, 1 Atk. 217; *Richardson v. Bradshaw*, *ib.* 129. For definition of trader, see sched. 1.

(*c*) Robson on Bank. p. 99.

(*d*) *La Vie v. Phillips*, 3 Burr. 1776; *Ex parte Carrington*, 1 Atk. 206.

(*e*) *Sparrow v. Carruthers*, cited 2 W. Bl. 1197; *Ex parte Franks*, 7 Bing. 769.

(*f*) 20 & 21 Vict. c. 85, ss. 21, 25, 26; 41 & 42 Vict. c. 19; *Ramsden v. Brearley*, L. R., 10 Q. B. 147; 44 L. J., Q. B. 46.

(*g*) *Ex parte Holland*, L. R., 9 Ch. 307; 43 L. J., Bank. 85; *Ex parte Jones, re Grissell*, 12 Ch. D. 484; 48 L. J., Bank. 109.

*Infants.*—An infant cannot be made a bankrupt, unless, *Infants.* perhaps, for necessities supplied to him (*h*), nor can he render himself liable to be made so by ratifying the debt on attaining his majority (*i*). An infant who has traded cannot be adjudicated a bankrupt on the petition of a person who has supplied him with goods on credit for trade purposes, but to whom he has made no express representation that he is of full age, even though he has previously filed a liquidation petition, the proceedings under which have become abortive. Nor could the Court under such circumstances make an adjudication against the infant under sub-section 12 of section 125 of the Bankruptcy Act, 1869. Whether, if the infant had expressly represented to the petitioning creditor that he was of full age, an adjudication could be made *quære*. The Infants' Relief Act, 1874, applies to the trading contracts of an infant (*j*).

*Foreigners.*—The English Court of Bankruptcy has *Foreigners.* *prima facie* no jurisdiction to make an adjudication of bankruptcy against a foreigner domiciled and resident abroad who has never been in England, even though he is a member of an English firm which has traded and contracted debts in England (*k*). A foreigner, however, domiciled abroad, who contracts debts in England or abroad, is liable to be made a bankrupt under the Bankruptcy Act, 1869, if he commits an act of bankruptcy in England, although he may have left England before the petition for adjudication is presented. But he cannot be made a bankrupt upon an alleged act of bankruptcy committed abroad (*l*).

(*h*) *Ex parte Jones*, 18 Ch. D. 109; 50 L. J., Ch. 673.

(*i*) 37 & 38 Vict. c. 62; *Ex parte Hibble*, L. R., 10 Ch. 373; 44 L. J., Bank. 63; *Rainey, In re*, 3 L. R., Ir. 459.

(*j*) *Ex parte Jones*, *supra*, overruling *Ex parte Lynch*, 2 Ch. D. 227.

(*k*) *Blain, Ex parte, Sawyer, In re*, 12 Ch. D. 512; 41 L. T. 46—C. A.

(*l*) *Ex parte Crispin*, L. R., 8 Ch. 374; 42 L. J., Bank. 65; 28 L. T. 483; 21 W. R. 491; *Pascal, Ex parte, Myer, In re*, 1 Ch. D. 509; 45 L. J., Bank. 81; 34 L. T. 10; 24 W. R. 262.

Undischarged bankrupt.

*Undischarged Bankrupt.*—An adjudication of bankruptcy against an undischarged bankrupt who has been permitted by the trustee to resume and continue business is good (*l*).

Companies.

*Companies.*—Neither partnerships, associations, nor bodies corporate registered under the Companies Act, 1862, can be adjudicated bankrupt (*m*). Such companies must be wound up, as explained in a previous chapter (*n*).

Petition for adjudication in bankruptcy.

*Adjudication.*—By sect. 6, “A single creditor, or two or more creditors if the debt due to such single creditor, or the aggregate amount of debts due to such several creditors, from any debtor, amount to a sum of not less than fifty pounds, may present a petition to the Court, praying that the debtor be adjudged a bankrupt, and alleging as the ground for such adjudication any one or more of the following acts or defaults hereinafter deemed to be and included under the expression ‘acts of bankruptcy:’

“(1.) That the debtor has, in England or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally (*o*):

“(2.) That the debtor has, in England or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof (*p*):

“(3.) That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely, departed out of England (*q*), or being

(*l*) *Ex parte Watson*, 12 Ch. D. 380.

(*m*) Sect. 5.

(*n*) See *ante*, p. 490.

(*o*) That is to say, a conveyance or assignment of *all* his property (see Robson, p. 123). As to when such a transaction comes within 13 Eliz. c. 5, and can be set aside as tending to defeat and hinder creditors, see *Spencer v. Slater*, 4 Q. B. D. 13; *Boldero v. London Discount Co.*, 5 Ex. D. 47; *Twyne's case*, 1 Sm. L. Ca. 7th ed. p. 12.

(*p*) For general summary as to the result of the cases decided under this paragraph, and as to what amounts to a fraudulent conveyance, see *ante*, p. 184; and *Ex parte Dann*, 17 Ch. D. 26.

(*q*) See *Ex parte Crispin*, L. R., 8 Ch. 374; 42 L. J., Bank. 65. The consequence of his departure must be to delay creditors. *Ex parte Nutrie*, 5 Ves. 376; *Holroyd v. Whitehead*, 3 Camp. 530.

out of England remained out of England (*r*) ; or being a *trader* departed from his dwelling-house, or otherwise absented himself (*s*) ; or begun to keep house (*t*) ; or suffered himself to be outlawed :

“(4.) That the debtor has filed in the prescribed manner in the Court a declaration admitting his inability to pay his debts (*u*) :

“(5.) That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than fifty pounds has in the case of a trader been levied by seizure and sale of his goods (*x*) :

“(6.) That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor’s summons requiring the debtor to pay a sum due, of an amount of not less than fifty pounds, and the debtor being a trader has for the space of seven days, or not being a trader has for the space of three weeks, succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same (*y*).

(*r*) See *Ex parte Bunney*, 32 L. J., Bank. 41 ; *Ex parte Crispin*, *supra*.

(*s*) See *Wydown’s case*, 14 Ves. 86 ; *Holroyd v. Whitehead*, *supra* ; *Mills v. Bennett*, 2 Rose, 269 ; *Ex parte Meyer*, L. R., 7 Ch. App. 178.

(*t*) If bankers close the doors and windows of the bank, and their customers cannot obtain admission, this is “beginning to keep house.” *Cumming v. Bailey*, 6 Bing. 363 : see further *Ex parte Foster*, 1 Rose, 50. This will be inferred from debtor giving an order to be denied to creditors. *Muchlow v. May*, 1 Taunt. 179. Stopping payment is not of itself an act of bankruptcy. *Hawkins v. Whitten*, 10 B. C. 217.

(*u*) The declaration must be signed, dated and witnessed according to Form 1 in the schedule, and filed in the Bankruptcy Court. See Rule 16. As to when the filing of the declaration is complete, see *Ransford v. Maule*, L. R., 8 C. P. 672 ; 42 L. J., C. P. 231.

(*x*) By sect. 87, where the goods of a trader have been taken in execution in respect of a judgment for a sum exceeding 50*l.*, the sheriff must retain the proceeds of the sale for fourteen days : and, if notice is served on him within that time of a bankruptcy petition against such trader, he must hold the proceeds in trust to pay the same to the trustee. See *Ex parte Villars*, L. R., 9 Ch. 432 ; 43 L. J., Bank. 76 ; *Ex parte Brooke*, L. R., 9 Ch. App. 301 ; *Ex parte Keys*, L. R., 10 Eq. 432 ; 39 L. J., Bank. 28 ; *Ex parte James*, L. R., 9 Ch. App. 609.

(*y*) See Rules 15, 17—25, and 41, 59, 61, 62, 63, 64, and Forms 4—9. As to who may take out a debtor’s summons, see *Ex parte Carter*, 2

No person, however, "shall be adjudged a bankrupt on any of the above grounds unless the act of bankruptcy on which the adjudication is grounded has occurred within six months before the presentation of the petition for adjudication; moreover, the debt of the petitioning creditor must be a liquidated sum due at law or in equity and must not be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors, in the event of the debtor being adjudicated a bankrupt (z), or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on an application being made by the trustee within the prescribed time after the date of adjudication, give up his security to such trustee for the benefit of the creditors upon payment of such estimated value" (a).

Proceedings  
in relation  
to a debtor's  
summons.

By sect. 7, "A debtor's summons may be granted by the Court on a creditor proving to its satisfaction that a debt sufficient to support a petition in bankruptcy is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt, after using reasonable efforts to do so. The summons shall be in the prescribed form, resembling, as nearly as

Ch. D. 806; *Ex parte Harris*, 2 Ch. D. 423; *Ex parte Brocklebank*, 6 Ch. D. 358; 46 L. J., Bank. 113; *Ex parte Shepherd*, 10 Ch. D. 573; 48 L. J., Bank. 35. A debtor so served may apply to have it dismissed, on the ground that he is not indebted (r. 22). See *Ex parte Barron*, L. R., 10 Ch. 269; *Ex parte Ellis*, L. R., 6 Ch. 602. As to proof of service, see *Ex parte Rogers*, 15 Ch. D. 207.

(z) See *Ex parte Good*, 14 Ch. D. 82; 49 L. J., Bank. 49; *Ex parte English and American Bank*, L. R., 4 Ch. 49; *Ex parte Manchester and Liverpool Bank*, L. R., 18 Eq. 249.

(a) The value so assessed is binding on the creditor. (*Ex parte King*, L. R., 20 Eq. 273; 44 L. J., Bank. 92.) The trustee is not so bound, for he may order the security to be realized (r. 136). The trustee can redeem the security at its assessed valuation (r. 100). By sect. 12, a secured creditor, notwithstanding bankruptcy, can realize his security. As to when his right to count as a secured creditor is contested, see r. 78. See, as to deduction of value of security, *Ex parte West Riding Union Banking Co.*, 19 Ch. D. 105.

circumstances admit, a writ issued by one of Her Majesty's Superior Courts. It shall state that in the event of the debtor failing to pay the sum specified in the summons, or to compound for the same to the satisfaction of the creditor, a petition may be presented against him praying that he may be adjudged a bankrupt. The summons shall have an endorsement thereon to the like effect, or such other prescribed endorsement as may be best calculated to indicate to the debtor the nature of the document served upon him, and the consequences of inattention to the requisitions therein made (*b*).

"Any debtor served with a debtor's summons may apply to the Court, in the prescribed manner and within the prescribed time to dismiss such summons, on the ground that he is not indebted to the creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting a bankruptcy petition against him; and the Court may dismiss the summons, with or without costs, if satisfied with the allegations made by the debtor, or it may, upon such security (if any) being given as the Court may require" (*c*).

The bankruptcy of a debtor is, by section 11, "deemed to have relation back to and to commence at the time of the act of bankruptcy being completed on which the order is made adjudging him to be bankrupt; or if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and to commence at the time of the first of the acts of bankruptcy that may be proved to have been committed by the bankrupt within twelve months next preceding the order of adjudication; but the bankruptcy is not related to any prior act of bankruptcy, unless it be that at the time of committing such prior act the bankrupt was indebted to some creditor or creditors in

Definition of  
commence-  
ment of bank-  
ruptcy.

(*b*) See further, r. 22. As to who may take out a debtor's summons, see *Ex parte Kibble*, L. R., 10 Ch. 373; *In re Brocklebank*, 6 Ch. D. 358; *Ex parte Shepherd*, 10 Ch. D. 572.

(*c*) For the proceedings on a debtor's summons, see rr. 22, 23, 59, 61, 63, 64, sect. 7; and for proceedings on petition, see rr. 26-48.

a sum or sums sufficient to support a petition in bankruptcy, and unless such debt or debts are still remaining due at the time of the adjudication" (d).

Creditors  
bound by  
bankruptcy  
proceedings.

"Where a debtor shall be adjudicated a bankrupt, no creditor to whom the bankrupt is indebted in respect of any debt provable in the bankruptcy shall have any remedy against the property or person of the bankrupt in respect of such debt except in manner directed by this act" (e).

By sect. 13, the Court may, after a presentation of a petition, restrain actions against the debtor in respect of debts provable in bankruptcy and appoint a receiver.

Meeting of  
creditors for  
appointment  
of persons to  
administer  
bankrupt's  
property.

*Appointment of Trustee.*—By sect. 14, "When an order has been made adjudging a debtor bankrupt, herein referred to as an order of adjudication, the property of the bankrupt shall become divisible amongst his creditors in proportion to the debts proved by them in the bankruptcy; and for the purpose of effecting such division the Court shall, as soon as may be, summon a general meeting of his creditors, and the creditors assembled at such meeting shall and may do as follows:

- "1. They shall, by resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt at such remuneration as they may from time to time determine, if any; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned:
- "2. They shall, when they appoint a trustee, by resolution declare what security is to be given, and to whom, by the persons so appointed, before he enters on the office of trustee:

(d) See *Ex parte Grepe*, 50 L. J., Ch. 723; *Ex parte Gilbey*, 8 Ch. D. 248; 47 L. J., Bank. 49.

(e) Sect. 12. As to the effect of bankruptcy on secured creditors, see *ante*, p. 518.

"3. They shall, by resolution, appoint some other fit persons not exceeding five in number, and being creditors, qualified to vote at such first meeting of creditors as is in this act mentioned, or authorized in the prescribed form by creditors so qualified to vote, to form a committee of inspection for the purpose of superintending the administration by the trustee of the bankrupt's property :

"4. They may, by resolution, give directions as to the manner in which the property is to be administered by the trustee, and it shall be the duty of the trustee to conform to such directions unless the Court for some just cause otherwise orders."

By sect. 15, "The property of the bankrupt divisible amongst his creditors, and in this act referred to as the property of the bankrupt, shall not comprise the following particulars (f) :

Descriptions of bankrupt's property divisible amongst creditors.

"(1.) Property held by the bankrupt on trust for any other person (g) :

"(2.) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole :

(f) Sect. 15. "Property" is defined by the act, sect. 4, as meaning money, goods, things in action and every description of property, real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined.

(g) This applies both to express and implied trusts. So property in the hands of a bankrupt factor is protected. (*Taylor v. Plumer*, 3 M. & S. 562.) See also, as to implied trusts, *Ex parte Ellis*, 1 Atk. 101; *Ex parte Barber*, 28 W. R. 522. So also to money in the hands of a trustee, the *cestui que trust* having a charge *pro tanto* upon the balance in the hands of the banker of the bankrupt trustee. (*Harris v. Truman*, 7 Q. B. D. 240; 50 L. J., Q. B. 633; *Ex parte Cooke*, 4 Ch. D. 123; *Kingston*, *Ex parte*, 13 Ch. D. 696; 49 L. J., Ch. 415, *ante*, p. 239.) Property held on a *bonâ fide* express (and sometimes on an implied) trust is also exempted from the operation of the reputed ownership clause (sub-s. 5). (*Martin*, *Ex parte*, 19 Ves. 491; *Harris v. Truman*, *supra*; *Ex parte Buck*, 3 Ch. D. 795; *Bright*, *Ex parte*, 10 Ch. D. 561.) Again, as we have already seen, property held by the bankrupt for a specific purpose is protected. Thus bills sent to a banker for a specific purpose and still remaining *in specie* do not pass to the banker's trustee. See *ante*, 138, where the subject has been fully discussed.

“But it shall comprise the following particulars :

“(3.) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him during its continuance (*h*) :

“(4.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or during its continuance, except the right of nomination to a vacant ecclesiastical benefice (*i*) :

#### Earnings.

(*h*) Money earned by the bankrupt when *carrying on a trade*, as distinguished from mere *personal labour*, during his bankruptcy passes to the trustee. (*Ex parte Banks*, 4 Ch. D. 689; 46 L. J., Bank. 74; *Emden v. Carte*, 17 Ch. D. 169, 768; 50 L. J., Ch. 492.) As a general rule all such interests as a husband possesses by marriage in his wife's property, and he can dispose of, passes to his trustee on his bankruptcy. (*Miles v. Williams*, 1 P. & W. 249; *Grey v. Kentish*, 1 Atk. 280.) As regards her choses in action, see *Mitford v. Mitford*, 9 Ves. 187; and as to her right to an equity to a settlement, *Murray v. Ellibank*, 10 Ves. 90; *White & Tudor's L. C.* 3rd ed. vol. i. p. 388.

#### Property of wife.

#### Pay or pension.

The pay, pension or salary of an officer in the army, navy or Civil Service, or the pension granted by the Treasury, pass to the trustee. (See sect. 89.) So the Court has power to order payment of any part of a salary or income received by the bankrupt other than in the way just mentioned. (Sect. 90.) A mere voluntary allowance made to the bankrupt is not “income” within the section. *Ex parte Wicks*, 17 Ch. D. 70.

#### Fraud.

As a general rule, property obtained by the bankrupt by fraud, or left with him entirely by mistake, will not pass to his trustee. *Ex parte Barnett*, 3 Ch. D. 123; *Lindsay v. Cundy*, 2 Q. B. D. 96; *Ex parte Whittaker*, 10 Ch. D. 446; 44 L. J., Bank. 91.

#### Disclaimer of onerous contracts.

By sect. 23 the trustee is enabled to disclaim in writing (see *Wilson v. Wallain*, 5 Ex. D. 155), property burdened with onerous covenants, or unmarketable shares, or unprofitable contracts, or unsaleable property, &c., &c. (*Ex parte Walton*, 17 Ch. D. 746; *In re West of England Bank*, 12 Ch. D. 228; 48 L. J., Bank. 764; *Ex parte Walton*, 17 Ch. D. 746; *Ex parte Ladbury*, *ib.* 532; *Ex parte Glegg*, 19 Ch. D. 7.) In the case of leases leave to disclaim ought to be obtained. (Rule 28; *Ex parte Ladbury*, *supra*; *Ex parte Sadler*, 19 Ch. D. 122.) Any person injured by such disclaimer may prove to the extent of the injury done to him. (Sect. 23; *Ex parte Blake*, 11 Ch. D. 572.) As to the time in which trustee must disclaim, see sect. 24; *Banner v. Johnston*, L. R., 5 H. L. 157; *Ex parte Richardson*, *Re Harris*, 16 Ch. D. 613. As to the liability of trustee before and after disclaimer, see *In re Sneezeum*, 3 Ch. D. 463; 45 L. J., Bank. 137; *Ex parte Dressler*, 9 Ch. D. 252; *Lowrey v. Barker*, 5 Ex. D. 170.

#### What actions pass to trustee.

(*i*) An undischarged bankrupt is capable of making a contract; but should the trustee choose to interfere and take the benefit of it, he may, as a general rule, do so. (*Herbert v. Sayer*, 5 Q. B. D. 965; *Jameson v. Brick and Stone Co.*, 42 Q. B. D. 208.) Actions for personal torts do not pass. (*Beckham v. Drake*, 2 H. L. 579.) As to trustee's power generally, see sect. 25.

“(5.) All goods and chattels being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner; provided that things in action other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause” (k).

(k) As to what are goods and chattels, see Robson, p. 497. Fixtures are not chattels till severed. (*Horn v. Baker*, 9 East, 215; 2 Sm. L. C. 7th ed. p. 205.) Bills and notes are chattels within the section, see Robson, 498. Choses in action are, by the concluding words of the paragraph, exempted, except debts due to the bankrupt in the course of his business. Shares, as we have seen, are not choses in action for this purpose. (*Ex parte Union Bank of Manchester*, L. R., 12 Eq. 354; 40 L. J., Bank. 57, ante, p. 163.) *Aliter*, a debenture of a joint stock company, *Ex parte Rensburg*, 4 Ch. D. 685; and a policy of insurance, *Ex parte Ibbetson*, 8 Ch. D. 519; and see ante, p. 161. Reputed ownership.

The goods must have been actually in the possession, order and disposition of the bankrupt: or constructively so, as where they are in the hands of his agent. (*Hornsby v. Millar*, 1 E. & E. 192.) He must, moreover, have had them in his sole possession, order and disposition; and, consequently, where the goods of a third person were in the joint possession of a bankrupt and his partner, who was solvent, it was held that they did not pass to the trustee of the former. (*Ex parte Dorman*, L. R., 8 Ch. 51; 42 L. J., Bank. 20. See also *Ex parte Fletcher*, 8 Ch. D. 51; *Ex parte Hayman*, ib. 11.) As to when property has been assigned by a bill of sale given by the bankrupt, see Chapter on Bills of Sale. Goods taken under a distress, or otherwise *rightfully* in the custody of the law, are not within the clause. (*Taylor v. Eckersley*, 5 Ch. D. 740.) As to the necessity of giving notice in the case of equitable deposits to exclude the operation of this clause, see ante, p. 161 *et seq.*; and as to the effect of change of firm, see *Ex parte Sprague*, 6 D. M. & G. 866; *Ex parte Burton*, 1 Gl. & J. 207. Possession, order and disposition.

The goods must be in the possession of the bankrupt as reputed owner: whether they are so or not is a question of fact. (*Ex parte Watkins*, L. R., 8 Ch. 520; 42 L. J., Bank. 50.) Possession for any length of time will raise a strong presumption that they are the bankrupt's (see *Lingham v. Biggs*, 1 B. & P. 82); on the other hand, that presumption can be rebutted by showing the existence of a well-established usage or custom of trade (a custom which the ordinary creditors, and not only those of a particular class, may be presumed to have known) to leave particular goods in the possession of persons who are not the true owners of them (*Ex parte Powell*, 1 Ch. D. 501; 45 L. J., Bank. 100; *Ex parte Emerson*, 41 L. J., Bank. 20; *Ex parte Watkins*, 8 Ch. 520): such, for instance, as letting furniture on hire to an hotel-keeper (*Ex parte Powell*, *supra*; *Craucour v. Salter*, 18 Ch. D. 30). See further on this Reputed owner.

By reason of the relation back of the date of bankruptcy, as has been already explained on p. 519, the trustee would, were it not for the following clauses, be entitled to all the real and personal property in the possession of the bankrupt at that period at which the bankruptcy is legally held to have commenced (*l*). To prevent the injustice that might in consequence be done to innocent parties, it is, by section 94 of the Bankruptcy Act of 1869, enacted that:—

Protection of  
certain trans-  
actions with  
bankrupt.

“Nothing in this Act contained shall render invalid,—

“(1.) Any payment made in good faith and for value received to any bankrupt before the date of the order of adjudication by a person not having at the time of such payment notice (*m*) of any act

Consent of  
owner.

subject, *Ex parte Lovering*, L. R., 9 Ch. 621; *Ex parte Hattersley*, 8 Ch. D. 601; *Ex parte Wingfield*, 10 Ch. D. 591.

By the expression “true owner,” is meant that person who has either a legal or equitable right to put an end to the apparent possession of the bankrupt (*Ex parte Union Bank of Manchester*, L. R., 12 Eq. 354; 40 L. J., Bank. 57); and, as we have seen, includes an equitable mortgagee (see *ante*, p. 161). The consent may be implied. See *Robson and Great Eastern Railway v. Turner*, L. R., 8 Ch. 149; *Ex parte Ward*, *ib.* 144; 42 L. J., Bank. 17; *Ex parte Hayman*, 8 Ch. D. 11; *Ex parte Bright*, 10 Ch. D. 566; 48 L. J., Bank. 81.

(*l*) *Rouch v. G. W. Rail. Co.*, 1 Q. B. D. 51; *Thomas v. Desanges*, 2 B. & Ald. 586.

(*m*) The notice may be express or inferred. The following rule is laid down by Mellish, L. J., in *Ex parte Snowball* (L. R., 7 Ch. 549): “It appears to us that if a person is proved to know facts which constitute an act of bankruptcy, or is proved to know facts from which a Court or a jury, or any impartial person, would naturally and properly infer that an act of bankruptcy had been committed, he ought to be held to have had notice that an act of bankruptcy had been committed, and that the Court ought not to enter upon the inquiry whether he did in his own mind believe that an act of bankruptcy had been committed, or whether he did in his own mind draw the inference that the bankrupt intended to defeat and delay his creditors. A person may have proved to have had notice that an act of bankruptcy had been committed, either by proof that he had received formal notice that an act of bankruptcy had been committed, or by proof that he knew facts which were sufficient to inform him that an act of bankruptcy had been committed. If he is proved to have received a formal notice he is not allowed to escape from the effect of having had notice by saying he had not read it, when he ought to have read it, or that he did not believe it when he had read it; and we think that if he is proved to have known facts which were sufficient to have

of bankruptcy committed by the bankrupt, and available against him for adjudication :

- “(2.) Any payment or delivery of money or goods belonging to a bankrupt, made to such bankrupt by a depositary of such money or goods before the date of the order of adjudication, who had not at the time of such payment or delivery notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication :
- “(3.) Any contract or dealing <sup>(n)</sup> with any bankrupt, made in good faith and for valuable consideration, before the date of the order of adjudica-

informed him that an act of bankruptcy had been committed, he cannot be allowed to escape from the effect of having had notice by saying he did not draw the natural inference from the facts.” A notice to an execution creditor which states that a petition in bankruptcy against the execution debtor has been filed on a date, at a Court, and by a person named in the notice, is a sufficient notice of an act of bankruptcy to prevent the execution being a protected transaction (sect. 95, sub-sect. 3), since such creditor ought to know that the petition would contain a statement that the debtor had committed an act of bankruptcy. (*Lucas v. Dicker*, 6 Q. B. D. 84; 50 L. J., C. P. 190. See also, on the subject of notice, *Ex parte Schulte*, L. R., 9 Ch. 409; *Somes v. Hallam*, L. R., 6 Q. B. 713; 40 L. J., Q. B. 229; *Ex parte Gilbey*, 8 Ch. D. 248; 47 L. J., Bank. 49.) Notice of an intention to commit an act of bankruptcy will not suffice. *Ex parte Arnold*, 3 Ch. D. 70; 45 L. J., Bank. 130.

<sup>(n)</sup> An attachment of a debt by a garnishee order is not “a dealing” within this clause. (*Ex parte Pillars, re Curtoys*, L. R., 17 Ch. D. 653; 50 L. J., Ch. 691. See also as to what is “a dealing,” *Ex parte Arnold*, *supra*; *Ex parte Dorman, re Lake*, L. R., 8 Ch. 57; 42 L. J., Bank. 20.) The drawer of a post-dated cheque given for payment is under no obligation to stop its payment before its date for the benefit of a third person. If, for instance, before the date of payment the drawer receives notice of an adjudication of bankruptcy, made against the payee since the delivery of the cheque to him upon an act of bankruptcy committed by him before the delivery, he is not bound, for the benefit of the bankrupt's creditors, to give notice to his bankers not to pay the cheque and thus expose himself to the risk of an action by a *bonâ fide* holder of the cheque for value. If the cheque was originally delivered by the drawer to the payee in good faith and for value, and without notice of an act of bankruptcy previously committed by the payee, on which an adjudication is subsequently made, the transaction is protected by sect. 94 (sub-sect. 3) of the Bankruptcy Act, 1869, and the trustee in the bankruptcy cannot recover the amount of the cheque from the drawer. When a customer pays a cheque to his bankers with the intention that the amount of it shall be at once placed to his credit, and the bankers carry the amount to his credit accordingly, they become immediately holders of the cheque for value, even though the customer's account is not overdrawn. *Ex parte Richdale, In re Palmer*, 19 Ch. D. 409.

tion, by a person not having, at the time of making such contract or dealing, notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication.

Protection of certain transactions entered into by or in relation to the property of the bankrupt.

“95. Subject and without prejudice to the provisions of this Act relating to the proceeds of the sale and seizure of goods of a trader (*o*) and to the provisions of this Act avoiding certain settlements (*p*), and avoiding, on the ground of their constituting fraudulent preferences certain

Proceeds of sale and seizure of goods.

(*o*) By sect. 87, “Where the goods of any trader have been taken in execution in respect of a judgment for a sum exceeding fifty pounds and sold, the sheriff, or in the case of a sale under the direction of the county court, the high bailiff or other officer of the county court, shall retain the proceeds of such sale in his hands for a period of fourteen days, and upon notice being served on him within that period of a bankruptcy petition having been presented against such trader, shall hold the proceeds of such sale, after deducting expenses, on trust to pay the same to the trustee; but if no notice of such petition having been presented be served on him within such period of fourteen days, or if, such notice having been served, the trader against whom the petition has been presented is not adjudged a bankrupt on such petition, or on any other petition of which the sheriff, high bailiff, or other officer has notice, he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of a bankruptcy petition been served on him.”

Avoidance of voluntary settlements.

(*p*) By sect. 91, “Any settlement of property made by a trader not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt appointed under this act, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee.” (See *Ex parte Huxtable*, L. R., 2 Ch. 54; 45 L. J., Bank. 59.) “Any covenant or contract made by a trader, in consideration of marriage, for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under this act.”

“‘Settlement’ shall for the purposes of this section include any conveyance or transfer of property.” See, on this section, *Ex parte Bolland*, *re Flint*, L. R., 17 Eq. 115; *Ex parte Cox, re Read*, 1 Ch. D. 302. Voluntary settlements can also be set aside under 13 Eliz. c. 5, where their effect is to hinder or delay creditors. See *Twyne’s case*, and notes thereto in Sm. L. Ca. 7th ed. vol. 1, p. 12, and the recent case of *Ex parte Russell*, *In re Butterworth*, 19 Ch. D. 588.

conveyances, charges, payments, and judicial proceedings (*q*), the following transactions by and in relation to

(*q*) By sect. 92, "Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own monies in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same become bankrupt within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee of the bankrupt appointed under this act; but this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration."

Avoidance of fraudulent preferences.

The following would seem to be a general summary of the law relating to fraudulent preference:—

In order to bring a case under this section it must in the first place appear that the transaction, &c. relied upon as being a fraudulent preference was made "with a view of giving the creditor a preference over the other creditors." These words may be taken as being equivalent in their effect and to bear the same construction as the word "voluntarily" (*Ex parte Bolland*, 7 Ch. App. 24; 20 W. R. 136) under the law prior to 1869. In considering, therefore, what is or is not a *voluntary* act under this section, the cases decided previous to the act will still be applicable.

Very slight evidence of pressure on the part of the creditor will prevent the transaction from being voluntary. (See *Ex parte Tempest*, L. R., 6 Ch. 70; *Ex parte Craven*, L. R., 10 Eq. 648; *Smith v. Pilgrim*, L. R., 2 Ch. D. 127; *Ex parte Winter*, 44 L. J., Bank. 107; *Ex parte Symonds*, 14 Ch. D. 693; 28 W. R. 803.) Any act, on his part, in short, that can be considered as interfering with the debtor's free volition will suffice. Thus, an earnest request by a creditor, although not accompanied by a threat or remonstrance, or very positive demand, would be enough to deprive the payment of that voluntary character which would tend to make it impeachable. (Bacon, V.-C., in *Ex parte Blackburn*, *re Cheeseborough*, L. R., 12 Eq. 358; 40 L. J., Bank. 79.) A threat to bring an action, when the debtor is on the verge of bankruptcy, will not amount to pressure. (*Ex parte Hall*, *In re Cooper*, 19 Ch. D. 580.) Payments in the ordinary course of trade, the honoring bills of exchange presented at their maturity, the payments of debts which have become due in the usual and customary manner, or payments made in fulfilment of a contract, or engagement to pay in a particular manner, or at a particular time, are not open to any objection on the ground of their being voluntary, even although they were made without any express demand by the creditor, unless at the time he had notice of an act of bankruptcy committed by the creditor. (*Ibid.*) So, also, a payment made to avoid a distress being levied, is not a voluntary preference. (*Stevenson v. Wood*, 5 Esp. 200.) Nor is a payment made in consequence, and under fear of civil or criminal proceedings, though such fear was in point of fact without foundation (*Thomson v. Freeman*, 1 T. R. 155), a voluntary preference of a creditor, though it can be set aside as a fraud on the bankruptcy law, is not an act of bankruptcy. (*Ex parte Stubbs*, 17 Ch. D. 58.)

Not merely must the payment be voluntary, but there must have existed also an *intention* on the part of the debtor to prefer the creditor (*Ex parte Topham*, L. R., 8 Ch. 614; 42 L. J., Bank. 57; *Ex parte Bolland*, L. R., 7 Ch. 24; 25 L. T. 648; 20 W. R. 136; *Ex parte London*

the property of a bankrupt shall be valid, notwithstanding any prior act of bankruptcy :

“(1.) Any disposition or contract with respect to the disposition of property by conveyance, transfer, charge, delivery of goods, payment of money, or otherwise howsoever made by any bankrupt in good faith and for valuable consideration, before the date of the order of adjudication, with any person not having at the time of the making of such disposition of property notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication :

“(2.) Any execution or attachment against the land of the bankrupt, executed in good faith by seizure before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being so executed by seizure notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication :

“(3.) Any execution or attachment against the goods

and County Bank, L. R., 16 Eq. 391), and a knowledge on the part of the creditor that he was being, in fact, preferred. (*Ex parte Kewan*, L. R., 9 Ch. 752 ; *Butcher v. Stead*, L. R., 7 H. L. 839 ; 44 L. J., Bank. 126 ; 24 W. R. 462 ; 33 L. T. 541.) Under the old law this was not necessary. (*Davidson v. Robinson*, 3 Jur., N. S. 791.)

Under the old law it was necessary, in order to impeach the transaction on the ground of it being a fraudulent preference, to show that at the time of making it the debtor contemplated bankruptcy ; and great difficulty arose in deciding what was or was not a contemplation of bankruptcy. The present section, however, does away with this ; and in its place requires it to be shown merely that the debtor was unable to pay his debts, as they became due, from his own monies : and that he has become bankrupt within three months from the date of the transaction. (*Ex parte Bolland*, *supra* ; *Ex parte Mathews*, 25 L. T., N. S. 276.)

This section, as to fraudulent preference, must be clearly understood as applying only where the parties stand in the position of debtor and creditor. As regards trust property, or property held for a specific purpose, or improperly detained from the possession of a third party to whom it has been given up, it has no application. (*Sinclair v. Wilson*, 20 Beav. 324 ; *Ex parte Kelly*, L. R., 11 Ch. D. 306 ; 48 L. J., Bank. 65 ; 40 L. T. 404 ; *Ex parte Stubbins*, 17 Ch. D. 38 )

of any bankrupt, executed in good faith by seizure and sale before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being executed by seizure and sale notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication.”

Conduct of bankrupt.

*General Provisions affecting Administration of Property.*—“The bankrupt shall, to the utmost of his power, aid in the realization of his property, and the distribution of the proceeds amongst his creditors. He shall produce a statement of his affairs (*r*) to the first meeting of creditors, and shall be publicly examined thereon on a day to be named by the Court, and subject to such adjourned public examination as the Court may direct (*s*). He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference to any particular bankruptcy, or made on the occasion of any special application by the trustee or any creditor.”

“If the bankrupt wilfully fail to perform the duties imposed on him by this section, or if he fail to deliver up possession to the trustee of any part of his property, which is divisible amongst his creditors under this act, and which may for the time being be in the possession or under the control of such bankrupt, he shall in addition to any other

(*r*) Rules 90—92.

(*s*) Rules 5, 96, 111.

punishment to which he may be subject be guilty of a contempt of Court, and may be punished accordingly.” (Sect. 19) (*t*).

Power of trustee to deal with property.

By sect. 25, it is enacted that, “Subject to the provisions of this act, the trustee shall have power to do the following things :

- “ (1.) To receive and decide upon proof of debts in the prescribed manner, and for such purpose to administer oaths :
- “ (2.) To carry on the business of the bankrupt, so far as may be necessary for the beneficial winding-up of the same :
- “ (3.) To bring or defend any action, suit, or other legal proceeding relating to the property of the bankrupt :
- “ (4.) To deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same ; and the sections fifty-six to seventy-three (both inclusive) of the act of the session of the third and fourth years of the reign of King William the Fourth (chapter seventy-four), ‘for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance,’ shall extend and apply to proceedings in bankruptcy under this act, as if those sections were here re-enacted and made applicable in terms to such proceedings :
- “ (5.) To exercise any powers the capacity to exercise which is vested in him under this act, and to execute all powers of attorney, deeds, and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this act :

(*t*) As to discovery of bankrupt’s property see sect. 96, and *Ex parte Tatton*, 17 Ch. D. 572 ; *Ex parte Bramble, re Toleman*, 13 Ch. D. 885. As to examination of witnesses, sect. 97, Rule 49, sects. 75, 98. By sect. 53, monies in the hands of bankrupt’s banker must be delivered up to trustee.

“(6.) To sell all the property of the bankrupt (including the goodwill of the business, if any, and the book debts due on growing due to the bankrupt) by public auction or private contract, with power, if he thinks fit, to transfer the whole thereof to any person or company, or to sell the same in parcels :

“(7.) To give receipts for any money received by him, which receipt shall effectually discharge the person paying such monies from all responsibility in respect of the application thereof :

“(8.) To prove, rank, claim, and draw a dividend in the matter of the bankruptcy or sequestration of any debtor of the bankrupt.”

By sect. 26, “The trustee may appoint the bankrupt himself to superintend the management of the property or of any part thereof, or to carry on the trade of the bankrupt (if any) for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct.”

Power to allow bankrupt to manage property.

By sect. 27, “The trustee may, with the sanction of the committee of inspection, do all or any of the following things :

Power of trustee to compromise, &c.

“(1.) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts :

“(2.) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any debtor or person who may have incurred any liability to the bankrupt, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon :

“(3.) Make such compromise or other arrangement as may be thought expedient with creditors, or

persons claiming to be creditors in respect of any debts provable under the bankruptcy :

“(4.) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person :

“(5.) To divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot advantageously be realized by sale.

“The sanction given for the purposes of this section may be a general permission to do all or any of the above-mentioned things, or a permission to do all or any of them in any specified case or cases.”

Power of trustee to accept composition or general scheme of arrangement.

And by sect. 28, “The trustee may, with the sanction of a special resolution of the creditors assembled at any meeting of which notice has been given specifying the object of such meeting, accept any composition offered by the bankrupt, or assent to any general scheme of settlement of the affairs of the bankrupt, upon such terms as may be thought expedient, and with or without a condition that the order of adjudication is to be annulled, subject nevertheless to the approval of the Court, to be testified by the judge of the Court signing the instrument containing the terms of such composition or scheme, or embodying such terms in an order of the Court.”

Trustee, if a solicitor, may be paid for services.

“A trustee shall not, without the consent of the committee of inspection, employ a solicitor or other agent, but where the trustee is himself a solicitor he may contract to be paid a certain sum by way of per-centage or otherwise as a remuneration for his services as trustee, including all professional services, and any such contract shall, notwithstanding any law to the contrary, be lawful.” (Sect. 29.)

*Payment of Debts and Distribution of Assets.*—"Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise shall not be provable in bankruptcy, and no person having notice of any act of bankruptcy, available for adjudication against the bankrupt, shall prove for any debt or liability contracted by the bankrupt subsequently to the date of his so having notice. Description of debts provable in bankruptcy.

"Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the order of adjudication, or to which he may become subject during the continuance of the bankruptcy by reason of any obligation incurred previously to the date of the order of adjudication, shall be deemed to be debts provable in bankruptcy, and may be proved in the prescribed manner before the trustee in the bankruptcy.

"An estimate shall be made according to the rules of the Court for the time being in force, so far as the same may be applicable, and where they are not applicable at the discretion of the trustee, of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

"Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court, and the Court may, if it think the value of the debt or liability incapable of being fairly estimated, make an order to that effect, and upon such order being made such debt or liability shall, for the purposes of this act, be deemed to be a debt not provable in bankruptcy, but if the Court think that the value of the debt or liability is capable of being fairly estimated it may direct such value to be assessed with the consent of all the parties interested before the Court itself without the intervention of a jury, or if such parties do not consent by a jury, either before the Court itself or some other competent Court, and may give all necessary directions for such purpose, and the amount of such value when assessed shall be provable as a debt under the bankruptcy.

“‘Liability’ shall for the purposes of this act include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the close of the bankruptcy, and generally it shall include any express or implied engagement, agreement or undertaking, to pay, or capable of resulting in the payment of money or money’s worth, whether such payment be as respects amount fixed or unliquidated; as respects time present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or assessable only by a jury, or as matter of opinion.” (Sect. 31.)

With certain exceptions made in favour of parochial and local rates and assessed taxes, and in favour of the wages or salaries of clerks or servants, all debts provable under the bankruptcy shall be paid *pari passu*. (See sect. 32.)

By sect. 34, power is reserved for a landlord to distrain for one year’s rent (*u*).

Proof in case  
of felony.

*Proof in case of Felony*.—It would seem that proof cannot be made by a creditor in respect of a claim arising directly out of a felony until the bankrupt has been prosecuted or a prosecution has become impossible. But it would appear that proof may be made for a claim only indirectly connected with a felony, as where bankers allowed a customer to overdraw his account, one of the inducements for their doing so being the deposit of certain bills which subsequently turned out to be forged by the bankrupt (*v*).

Distribution  
of dividends.

*Dividends*.—“The trustee shall from time to time, when

(*u*) See *In re Threlfall*, 16 Ch. D. 274; *Ex parte Pannet*, *ib.* 226.

(*v*) *Ex parte Leslie*, 20 Ch. D. 131; *Ex parte Elliot*, 3 Mont. & A. 110; *Re Maplebeck*, 4 Ch. D. 150; *Ex parte Bell*, 10 Ch. D. 667.

the committee of inspection determines, declare a dividend amongst the creditors who have proved to his satisfaction debts provable in bankruptcy, and shall distribute the same accordingly; and in the event of his not declaring a dividend for the space of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not declaring the same." (Sect. 41.)

"In the calculation and distribution of a dividend it shall be obligatory on the trustee to make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined." (Sect. 42.)

Provision for creditors residing at a distance, &c.

"Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any monies for the time being in the hand of the trustee any dividend or dividends he may have failed to receive before such monies are made applicable to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein." (Sect. 43.)

Right of creditor who has not proved debt before declaration of a dividend.

"When the trustee has converted into money all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the bankruptcy, he shall declare a final dividend, and give notice of the time at which it will be distributed." (Sect. 44.)

Final dividend.

*Proof by and against Surety.*—A surety who has paid the creditor, prior to the bankruptcy of the principal debtor, the whole of the debt, may prove for such amount on the latter's bankruptcy; and if the creditor has tendered his proof, the surety is entitled to stand in his place

Proof by and against surety.

as regards dividends, securities, &c. (*x*) in the absence of any agreement to the contrary (*y*).

Where, on the other hand, it is the surety who becomes bankrupt, the creditor is entitled to prove for the sum due to him; even, it would seem, before the principal debtor has made default. (Sect. 31.)

Where the surety has been discharged, the creditor, of course, will not be able to so prove. As to the manner in which a surety may be discharged, see *ante*, p. 208. As to a surety's right to prove against his co-surety on the latter's bankruptcy, see *Adkins v. Farrington* (*z*).

Proof by  
holder of bill.

*Proof by Holder of Bill.*—The drawer and indorser of a bill stand in the position of surety for the acceptor who is primarily liable thereon; should, therefore, the holder of the bill release the acceptor, he will lose his right of proving against such parties, unless, indeed, as in the case of suretyship generally, he expressly reserves his rights against them (*a*).

If, however, he has not in any way released them, he will have a right of proof against all such parties to the bill, provided he has not failed to give proper and due notice of dishonour (*b*). Such notice may, however, be dispensed with as against a person who has no right of action or contribution against any other party to the bill, and whom, it is clear, neglect to give notice cannot have damnified (*c*).

So notice is excused as against the drawer of an accom-

(*x*) *Brandon v. Brandon*, 3 De G. & J. 324; *Thornton v. McKewan*, 1 H. & M. 529; *Hobson v. Bass*, 6 Ch. App. 792; *Duncan Fox & Co. v. North Wales Bank*, 6 App. Ca. 1. See also *ante*, p. 213.

(*y*) *Midland Banking Co. v. Chalmers*, L. R., 4 Ch. 398; *Ex parte National Bank, re Rees*, 17 Ch. D. 98.

(*z*) 29 L. J., Ex. 345; *Ex parte Snowden*, 17 Ch. D. 44; *Robson*, p. 289.

(*a*) See *English v. Darby*, 2 B. & P. 61; *Strong v. Foster*, 25 L. J., C. P. 106; *Byles*, p. 251.

(*b*) *Ex parte Bingold*, 2 M. & S. 633; *Rhode v. Proctor*, 4 B. & C. 517; *Ex parte Baker*, 4 Ch. D. 795.

(*c*) See *Foster v. Parker*, 2 C. P. D. 18; 46 L. J., Bank. 60.

modation bill who has had no effects in the hands of the acceptor during the currency of the bill, or reasonable period for supposing the bill would be paid (*d*).

Where the bill is not due at the time of bankruptcy, the holder is nevertheless entitled to prove thereon under Rule 77, subject to a rebate of interest at the rate of five per cent. per annum from the time when the dividend is declared to that at which the bill would have become due, according to the terms upon which such bill was drawn (*e*). The indorsee of an overdue bill, since he takes it subject to all equities as previously shown, has only the same right of proof as his indorser had at the time of bankruptcy (*f*).

If the holder of a bill has received a dividend out of the estate of any one of the parties to it (or, indeed, if any, such dividend has been declared), he can only prove for the balance, as against the estate of any other party (*g*). Generally speaking, however, he is entitled to prove for the full amount against all the parties to the bill, until he has been paid the full 20s. in the pound (*h*). See further on proof upon bills of exchange, &c., *ante*, p. 138 *et seq.* And for the doctrine in *Ex parte Waring*, see p. 149.

When a bill, accepted for the accommodation of the drawer, is deposited by him as security for a debt less than the amount of the bill, the holder is entitled to prove in the bankruptcy of the acceptor for the full amount of the bill, though he cannot receive dividends in excess of the debt due to him by the drawer (*i*).

*Secured Creditor.*—As to when a secured creditor can prove for his debt, see *ante*, p. 528. Secured creditor.

(*d*) *Bickerdike v. Bollman*, 1 T. R. 405.

(*e*) See *Alsager v. Currie*, 12 M. & W. 755.

(*f*) *Ex parte Rogers*, Buck, 490; *Ex parte Swan*, L. R., 6 Eq. 344; *In re European Bank*, L. R., 5 Ch. App. 358; 39 L. J., Ch. 588.

(*g*) *Ex parte Todd*, 2 Rose, 232; *Ex parte Wildman*, 1 Atk. 109; *Ex parte Adam*, 2 Rose, 36.

(*h*) *Id.*

(*i*) *Ex parte Newton*, 16 Ch. D. 330.

Power to present petition against one partner.

*By and against Partner.*—"Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present such petition against any one or more partners of such firm without including the others." (Sect. 100.)

Power to dismiss petition against some respondents only.

101. "Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them."

Joint creditor may prove for purpose of voting.

103. "If one partner of a firm is adjudged bankrupt, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat, but shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts" (i). And by rule 76, any separate creditor of any bankrupt shall be at liberty to prove his debt under any adjudication of bankruptcy made against such bankrupt, jointly and with any other person. Distinct accounts are to be kept of the joint estate, and of the separate estate, and the separate estate is to be applied in the first place in satisfaction of the debts of the separate creditors: and the joint estate of the joint creditors: and by sect. 104, "Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the

Joint and separate dividends.

(i) See *Ex parte Cooke*, 2 P. Wms. 500. As to what is "joint" and "separate" estate, see *Ex parte Dear*, 1 Ch. D. 514; 45 L. J., Bank. 221; *Ex parte Manchester Bank*, 12 Ch. D. 917; 48 L. J., Bank. 94; *Ex parte Butcher*, 13 Ch. D. 466; *In re Collie*, *Ex parte Manchester and County Bank*, 3 Ch. D. 481; 45 L. J., Bank. 149; *Ex parte Buckley*, 16 Ch. D. 513. As to proof by firm against separate estate of one partner, see *Ex parte Sillitoe*, 1 Gl. & J. 374; *Ex parte Harris*, 1 Rose, 437; and as to proof by partner against firm, *Ex parte Maude*, L. R., 2 Ch. 550; *Ex parte Sillitoe*, *supra*; and as to proof by partner against separate estate of co-partner, *Ex parte Maude*, *supra*; *Ex parte Sheen*, 6 Ch. D. 235; *Lacey v. Hill*, 8 Ch. D. 441. For full information on this subject, see Robson, 717.

expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property."

*Double Proof.*—By sect. 37, "If any bankrupt is at the date of the order of adjudication liable in respect of distinct (*k*) contracts as member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts, against the properties respectively liable upon such contracts" (*l*).

Proof in  
respect of  
distinct con-  
tracts.

*Set-off.*—39. "Where there have been mutual credits, mutual debts, or other mutual dealings between the bankrupt and any other person proving or claiming to prove a debt under his bankruptcy, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of such account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a bankrupt in any case where he had at the time of giving credit to the bankrupt notice of an act of bankruptcy committed by such bankrupt and available against him for adjudication" (*m*).

Set-off.

(*k*) The contracts, though they must be distinct, may be contained in the same instrument. *Ex parte Honey*, L. R., 7 Ch. 178; 41 L. J., Bank. 9.

(*l*) On this section, see *In re Oriental Commercial Bank*, L. R., 7 Ch. 99; *Ex parte Banco di Portugal*, L. R., 11 Ch. 717; 5 App. Ca. 161; 49 L. J., Bank. 33; *Ex parte Poulson*, De Gex, 79; *Ex parte Adamson*, 8 Ch. D. 897; *Ex parte Findlay*, 17 Ch. D. 331; 50 L. J., Ch. 696.

(*m*) The transactions must have been mutual; in other words, it must have been between the same parties and in the same right—thus a debt

Order of discharge.

*Discharge of Bankrupt.*—“When a bankruptcy is closed (*n*), or at any time during its continuance, with the assent of the creditors, testified by a special resolution, the bankrupt may apply to the Court for an order of discharge; but such discharge shall not be granted unless it is proved to the Court that one of the following conditions has been fulfilled, that is to say, either that a dividend of not less than ten shillings in the pound has been paid out of his property, or might have been paid

due to a bankrupt from an executor personally cannot be set off against a debt due from the bankrupt to the executor in his representative capacity, and *vice versa*. (See *Stammers v. Elliot*, L. R., 3 Ch. App. 195; *Hallett v. Hallett*, 13 Ch. D. 332; *Bishop v. Church*, 3 Atk. 691; *Ex parte Morier*, 12 Ch. D. 491; 49 L. J., Bank. 9.) In the same way a debt due from a partnership cannot be set off against the separate debt of an individual partner. (*Ex parte Twogood*, 11 Ves. 517; *Lanesborough v. Jones*, 1 P. W. 326.) It seems, however, that debts not due in the same right may be set off against each other by special agreement. (*Kinirerly v. Hosack*, 2 Taunt. 170; *Vulliamy v. Noble*, 3 Mer. 618.) *Quære*, how far it is competent for the parties to exclude by special agreement the operation of the mutual credit clause altogether. (*Ex parte Fletcher*, 6 Ch. D. 350; *Ex parte Barnet*, L. R., 9 Ch. 293; 43 L. J., Bank. 87; *Young v. Bank of Bengal*, 1 Deac. 653.) As to the nature of the cross claims, it has been held a specialty debt can be set off against a simple contract only (*Pedder v. Preston*, 12 C. B., N. S. 535; *Bailey v. Johnston*, L. R., 7 Eq. 363; *Ex parte Law*, De Gex, 378); an unliquidated sum arising out of contract against a liquidated sum (*Booth v. Hutchinson*, L. R., 15 Eq. 30; 42 L. J., Ch. 492); and a secured debt against one unsecured (*Ex parte Barnett, re Derveze*, L. R., 9 Ch. 293; 43 L. J., Bank. 87). A sum payable in futuro can under this section be set off against a sum payable at once. (*Ex parte Prescott*, 1 Atk. 230; *Alsager v. Currie*, 12 M. & W. 751.) See further as to what debts may be set off. (See *Rawley v. Rawley*, 1 Q. B. D. 460; 45 L. J., Q. B. 675; *Ex parte Prid, re Lankester*, L. R., 10 Ch. 648; *Booth v. Hutchinson*, L. R., 15 Eq. 30; 42 L. J., Ch. 492; *Ex parte Bolland*, 8 Ch. D. 225; 47 L. J., Bank. 52.) A debtor of a bankrupt cannot set off a bill or note indorsed after the bankruptcy. (*Dickson v. Evans*, 6 T. R. 67.) The transaction must terminate or must have a natural tendency to terminate in a debt. (*Naraji v. Bank of India*, L. R., 3 C. P. 444; *Ex parte Bolland, supra*.) The object of sect. 39 of the Bankruptcy Act, 1869, is that where there are mutual accounts a secret act of bankruptcy should not stop the currency of those accounts; the existence of mutual dealings and accounts protects the credits and debts on each side from the operation of the act of bankruptcy until notice of it. The exact date at which a mutual account is to stop must depend on the circumstances of the case and the nature of the credits; but may and ought to be taken at least up to the date when the person claiming the benefit of sect. 39 has notice of an act of bankruptcy. (*Elliot v. Turquand*, 7 App. Ca. 79.) As to the right of a person owing a debt to a bank and buying up its notes after it has stopped payment to set off the amount paid against his debt due to it, see *ante*, p. 354; *Dickson's case*, 1 B. & Ad. 343. See further as to set-off, p. 293.

(*n*) See sect. 47.

except through the negligence or fraud of the trustee, or that a special resolution of his creditors has been passed to the effect that his bankruptcy or the failure to pay ten shillings in the pound has, in their opinion, arisen from circumstances for which the bankrupt cannot justly be held responsible, and that they desire that an order of discharge should be granted to him; and the Court may suspend for such time as it deems to be just, or withhold altogether, the order of discharge in the circumstances following; namely, if it appears to the Court on the representation of the creditors made by special resolution, of the truth of which representation the Court is satisfied, or by other sufficient evidence, that the bankrupt has made default in giving up to his creditors the property which he is required by this act to give up; or that a prosecution has been commenced against him in pursuance of the provisions relating to the punishment of fraudulent debtors, contained in the 'Debtors Act, 1869,' in respect of any offence alleged to have been committed by him against the said act" (o).

By sect. 49 it is enacted, that "An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust, nor from any debt or liability whereof he has obtained forbearance by any fraud (p), but it shall release the bankrupt from all other debts provable under the bankruptcy (q), with the exception of—

"(1.) Debts due to the crown:

"(2.) Debts with which the bankrupt stands charged at the suit of the crown or of any person for

Effect of  
order of dis-  
charge.

(o) Sect. 48. By r. 140, an order of discharge is not to be granted till after the bankrupt's public examination. See, further, as to discharge, rr. 138—142.

(p) See *Emma Silver Mining Co. v. Grant*, L. R., 17 Ch. D. 122; 50 L. J., Ch. 449; *Ex parte Hemming*, L. R., 13 Ch. D. 163; 49 L. J., Bank. 17.

(q) So even if the creditor did not know of the proceedings. See *Heather v. Webb*, 2 C. P. D. 1; 46 L. J., Q. B. 462; *Elmsley v. Corrie*, 4 Q. B. D. 295; 48 L. J., Q. B. 462.

any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence :

“And he shall not be discharged from such excepted debts unless the Commissioners of the Treasury certify in writing their consent to his being discharged therefrom.

“An order of discharge shall be sufficient evidence of the bankruptcy, and of the validity of the proceedings thereon, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this act and the special matter in evidence” (*r*).

Exception of  
joint debtors.

“The order of discharge shall not release any person who, at the date of the order of adjudication, was a partner with the bankrupt, or was jointly bound or had made any joint contract with him.” (Sect. 50.)

Where a discharged debtor promises, for a new and valuable consideration, but not otherwise, to pay a debt released by such discharge, an action will lie against him for such debt (*s*).

Status of un-  
discharged  
bankrupt.

*Status of undischarged Bankrupt.*—“Where a person who has been made bankrupt has not obtained his discharge, then, from and after the close of his bankruptcy, the following consequences shall ensue :

“(1.) No portion of a debt provable under the bankruptcy shall be enforced against the property of the person so made bankrupt until the expiration of three years from the close of the bankruptcy ; and during that time, if he pay to his

(*r*) See *Wadsworth v. Pickles*, 5 Q. B. D. 470; 49 L. J., Q. B. 454; *Lewis v. Leonard*, 5 Ex. D. 165; 49 L. J., Ex. 308.

(*s*) *Jakeman v. Cook*, 4 Ex. D. 26; 48 L. J., Ex. 165; *Heather v. Webb*, *supra*.

creditors such additional sum as will, with the dividend paid out of his property during the bankruptcy, make up ten shillings in the pound, he will be entitled to an order of discharge in the same manner as if a dividend of ten shillings in the pound had originally been paid out of his property :

- “(2.) At the expiration of a period of three years from the close of the bankruptcy, if the debtor made bankrupt has not obtained an order of discharge, any balance remaining unpaid in respect of any debt proved in such bankruptcy (but without interest in the meantime) shall be deemed to be a subsisting debt in the nature of a judgment debt, and, subject to the rights of any persons who have become creditors of the debtor since the close of his bankruptcy, may be enforced against any property of the debtor, with the sanction of the Court which adjudicated such debtor a bankrupt, or of the Court having jurisdiction in bankruptcy in the place where the property is situated, but to the extent only, and at the time and in manner directed by such Court, and after giving such notice and doing such acts as may be prescribed in that behalf” (t).

All the real and personal property devolving on or acquired by the bankrupt after the close of the bankruptcy belongs to him and not to the trustee, although the bankrupt has not obtained his discharge (u) ; and all the property acquired by him after his discharge will belong to him, although before the close of the bankruptcy (x).

(t) Sect. 54. And *Ex parte Lancaster Banking Corporation*, L. R., 10 Ch. D. 776 ; 48 L. J., Bank. 89 ; *Ex parte Watson, re Roberts*, 12 Ch. D. 380.

(u) *In re Pettit's Estate*, 1 Ch. D. 478 ; 45 L. J., Bank. 63.

(x) *Ebbs v. Boulnois*, L. R., 10 Ch. 479. And see *Ex parte Wainwright*, 19 Ch. D. 140.

## CHAPTER LVII.

## BILLS OF SALE.

By the Act 41 & 42 Vict. c. 31, which came into operation on the 13th January, 1879, the previous Acts of 1854 (*a*) and 1866 (*b*) were repealed (*c*). By sect. 23 (*d*) of the present act, however, the operation of those acts has been preserved as to bills of sale executed before the 1st January, 1879, except (1) as to a rule of construction in the case of fixtures or growing crops (*e*), and (2) as to renewal of registration (*f*), in which cases the provisions of the present act are to apply to bills of sale whether executed before or after its commencement.

The elements  
of a bill of  
sale.

The elements of a bill of sale are that it is an instrument in the nature of an assurance (*g*), by which the property in personal chattels, including such things as are for the purposes of the act made personal chattels, passes from the grantor (*h*) to the grantee as security for a debt, and whereby the holder or grantee has power either with or without notice, and either immediately or at any future time to *seize* (*i*) or take possession of any personal chattels comprised in or made subject to such bill of sale (*j*).

A bill of sale may be either absolute or subject to a trust (*j*).

(*a*) 17 & 18 Vict. c. 36.

(*b*) 29 & 30 Vict. c. 96.

(*c*) 41 & 42 Vict. c. 31, s. 23; see post, Appendix. There is, however, a bill of the present session in progress which will, if it be passed, materially affect the law as to bills of sale. The provisions of it are treated in a note appended to this chapter.

(*d*) See post, Appendix.

(*e*) Sect. 7, post, Appendix.

(*f*) Sect. 11, post, Appendix.

(*g*) Sect. 4.

(*h*) *Ex parte Crawcour*, 9 Ch. D. 419.

(*i*) See note at end of chapter for the limitation proposed to be put upon the grantee's power to seize. Sect. 7 of the proposed Act.

(*j*) Sect. 3, post, Appendix.

A bill of sale is usually, though not necessarily, an assignment by deed. How made.

What instruments come within the above description, and are included by the act in the expression "bill of sale," are set forth in sect. 4 (*m*). In the list there given the inclusion of "inventories of goods with receipt thereto attached, or receipts for purchase-moneys of goods" is new, and it has been held under this provision in accordance with decisions under the general terms of the Act of 1854, that only such inventories and receipts require registration as bills of sale as are themselves the effective means by which the property in the goods to which they relate passes, being thus *assurances*; but that when the sale itself is sufficient to pass the property, the fact that an inventory and receipt is given at the same time does not make it an assurance within the act (*n*).

Sect. 4.

What included in expression bill of sale.

Inventories with receipt.

Thus a sale by a sheriff under an execution passes the property independently of the inventory and receipt given by him, which does not therefore require registration as a bill of sale (*o*). If, however, the inventory and receipt is something more than mere evidence of the transaction by which the property passes, and is itself the means of the transfer, it requires registration as a bill of sale (*p*).

"And also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels or to any charge or security thereon shall be conferred;" this is also a new provision, and is declaratory of decisions under the Act of 1854, by which it has been held that an agreement to give a bill of sale, though a valid assignment in equity,

Agreements giving charges in equity.

(*m*) See Appendix.

(*n*) *Marsden v. Meadows*, 7 Q. B. D. 80; *Woodgate v. Godfrey*, 5 Ex. D. 24; *Byerly v. Prevost*, L. R., 6 C. P. 144; *Graham v. Wilcoxon*, 46 L. J., Exch. 55; *Allsop v. Day*, 31 L. J., Exch. 105.

(*o*) *Woodgate v. Godfrey*, *supra*; *Marsden v. Meadows*, *supra*.

(*p*) *Ex parte Odell*, 10 Ch. D. 76; *Ex parte Cooper*, *ibid.* 313; *In re Bamfield*, 20 W. R. 925; *Thomson v. Barrett*, 1 L. T., N. S. 268; *Phillips v. Gibbons*, 5 W. R. 527; *Brantom v. Griffiths*, 2 C. P. D. 212.

cannot be relied upon as equivalent to a bill of sale without involving the consequence that it acquires the character of, and needs registration as, a bill of sale (*q*). Thus, where brokers supplied goods on credit to traders on the faith of a letter of hypothecation whereby they engaged to hold the goods so supplied at the disposal of the brokers, and to give the brokers when required a valid and effectual transfer and assurance of the same, the document was held to be void against the trustee in liquidation for want of registration as a bill of sale (*r*); and a deed by which a debtor covenants that if a debt is not paid on a certain day named, certain chattels shall be charged with it, and that he will, when required, assign them to the creditor as security, requires registration as a bill of sale (*s*). Such agreements are sometimes also relied upon not as bills of sale themselves but to support bills of sale afterwards given in pursuance of them, which would otherwise be void against trustees in bankruptcy as being given for a past consideration (*t*).

Licences to  
take posses-  
sion.

“Licences to take possession of personal chattels as security for any debt,”—the latter words of this definition, “security for any debt,” are material. The words being a re-enactment of a provision in the Act of 1854, decisions under that act apply. Thus it has been held that a brewer’s lease containing a licence and authority to the lessor in case of default in payment of any sum that may be due and owing to him from the lessee on a balance of account to take possession of the stock in trade and effects of the lessee, was in effect a bill of sale of the personal chattels and required registration as such (*u*); but a building agreement by which a landowner, on default of the builder in fulfilling the terms of the agreement, was to be

(*q*) *Ex parte Mackay*, L. R., 8 Ch. 643; *Ashton v. Blackshaw*, L. R., 9 Eq. 510.

(*r*) *Ex parte Conning*, L. R., 16 Eq. 416.

(*s*) *Edwards v. Edwards*, 2 Ch. D. 291.

(*t*) As to which, see post, p. 565.

(*u*) *Ex parte Hopecraft*, 14 W. R. 168.

at liberty to re-enter and expel the builder and take possession of all building materials then left on the land "as and for liquidated damages," was not a bill of sale within the act, such licence not being "as security for any debt" (*x*). Nor is a licence to a vendor to seize furniture or pianos, in default of payment of instalments under an agreement to purchase them on the hire system, under a bill of sale, for the property in the goods does not pass from the vendor until the completion of the payments (*y*).

A deed in which, after reciting that V. was indebted to several creditors therein mentioned, that V., unable to pay his debts in full, had offered a composition of 7*s.* 6*d.* in the £ payable by instalments guaranteed by D. B., and which the creditors accepted, it was then stated that D. B. guaranteed the payment of two instalments of 3*s.* and 3*s.* in the £, and that V. in consideration thereof granted and assigned all his stock in trade "for the payments of the said sums hereinbefore mentioned in trust for the said creditors," was held to be an assignment for the benefit of creditors, and within the meaning of the exception (*z*).

The exceptions.  
Assignments  
for the benefit  
of creditors.

A post-nuptial settlement to trustees for the benefit of wife and children not made in pursuance of ante-nuptial articles is not within the exception, but operates as a bill of sale and must be registered (*a*).

Marriage  
settlements.

A bill of sale of a ship is within the exception, and none the less because it has not been registered under the Merchant Shipping Act of 1854 (*b*).

Transfers of  
ship or  
shares  
thereof.

(*x*) *Ex parte Newitt, In re Garrard*, 16 Ch. D. 522; 44 L. T. 5; and for other instances of licences to take possession not within the act, see *Brown v. Bateman*, L. R., 2 C. P. 272; *Blake v. Izard*, 16 W. R. 108; *Morton v. Woods*, L. R., 4 Q. B. 293; *Hale v. Saloon Omnibus Company*, 4 Drew. 498.

(*y*) *Ex parte Crawcour*, 9 Ch. D. 419; *Crawcour v. Salter*, 18 Ch. D. 30.

(*z*) *General Furnishing and Upholstering Company v. Tenn*, 32 L. J., Ex. 220; 2 H. & C. 153.

(*a*) *Fowler v. Foster*, 28 L. J., Q. B. 210; *Ashton v. Blackshaw*, L. R., 9 Eq. 510.

(*b*) *Union Bank of London v. Lenanton*, 3 C. P. D. 243.

Warrants or orders for delivery of goods or other documents used in the ordinary course of business, &c.

This provision appears to be evidence of an intention of the legislature that while the interests of the persons regarded by the statute shall be fairly secured, the ordinary mode of business and commercial transactions shall not be unduly interfered with, and the governing words for the latter members of the clause of exceptions are "in the ordinary course of business." Thus, within the exception comes a letter of hypothecation given in the ordinary course of business by a factor and warehouse-keeper pledging certain goods to secure a sum of money, no delivery of the goods being made, but a promise to deliver them on the following morning being added at the foot of the letter (*d*); and also, it is presumed, an agreement by a purchaser to give to the vendor a lien or right connected with the vendor's lien, and analogous to it, if made so as to be a transfer of goods within the ordinary course of business (*e*).

Grantor must be in possession.

A bill of sale, to be good within the act, must be a document executed by a person in possession of the goods at the time (*f*).

After-acquired or substituted property.

The property in stock in trade afterwards (*g*) brought into the premises in substitution for, or addition to, that which is there at the time of making the bill of sale, may be passed by the same bill of sale (*h*), and so in the case of fixtures (*i*).

Personal chattels defined, s. 4. include fixtures and growing crops separately assigned;

Personal chattels are defined in sect. 4 (*k*); and fixtures (other than trade machinery as defined in sect. 5), and growing crops are made personal chattels within the act *only when separately assigned* (*k*).

(*d*) *Ex parte North Western Bank*, L. R., 15 Eq. 69.

(*e*) *Ex parte Watson*, *In re Lore*, 5 Ch. D. 35.

(*f*) *Chapman v. Knight*, 5 C. P. D. 314.

(*g*) See note at end of chapter, sects. 4, 5, 6, for the proposed alteration in the law as to after-acquired property, p. 566.

(*h*) *Lazarus v. Andrade*, 5 C. P. D. 318; 43 L. T. 30; *Collyer v. Isaacs*, W. N. 1881, 140.

(*i*) *Meux v. Jacobs*, L. R., 7 H. L. 481, at p. 491; *Bagholt v. Norman*, 41 L. T. 787.

(*k*) See post, Appendix.

Trade machinery, as defined in sect. 5 (*l*), is made personal chattels within the act, as from the 1st January, 1879, whether separately assigned or not.

Sect. 5.  
and trade  
machinery.

Separate assignment is defined by sect. 7 (*l*) to be where no interest in the land passes by the same instrument by which the fixtures or growing crops pass (*l*).

Sect. 7.  
Separate  
assignment,  
what?

This definition of separate assignment is made retrospective in its application (*l*), and in such general terms as, it is submitted, to apply to all deeds comprising fixtures, whether trade or other, executed before the commencement of the act (*m*). Although growing crops are mentioned in this provision for the retrospective operation of the rule of construction as to separate assignment, it has no application in respect of them, for they were not personal chattels under the old act (*n*), and the inclusion of them in the definition of personal chattels in the present act is not retrospective. No question, therefore, can arise as to growing crops comprised in deeds executed before the commencement of the present act.

Definition of  
separate as-  
signment  
retrospective  
in operation.

Registration, therefore, appears to be now necessary to the validity of bills of sale comprising fixtures:—

Provisions  
of the act  
apply;

(a) If executed before the commencement of the present act, only where the fixtures (including trade fixtures, but excluding growing crops) (*o*) comprised in them are separately assigned or charged within the meaning of sect. 7 of the Act of 1878 (*p*).

(a) as to  
deeds exe-  
cuted before  
Jan. 1879.

(b) If executed since the commencement of the act,  
(i) as regards trade fixtures (see sect. 5), in all

(b) as to  
deeds exe-  
cuted since  
Jan. 1879.

(*l*) See post, Appendix.

(*m*) See *In re Armytage* (14 Ch. D. 379) for observations upon the meaning of sect. 7, but there has been no decision exactly in point.

(*n*) *Brantom v. Griffiths*, 2 C. P. D. 212; *Ex parte Payne*, 11 Ch. D. 539.

(*o*) *Brantom v. Griffiths*, 1 C. P. D. 349; 2 C. P. D. 212; *Ex parte Payne*, *In re Cross*, 11 Ch. D. 539.

(*p*) *In re Armytage*, 14 Ch. D. 379; 42 L. T. 443. The test, under the Act of 1854, as to whether an assignment of trade fixtures required registration was, "had the mortgagee power to deal separately with or disannex the fixtures?" *Ex parte Daglish*, L. R., 8 Ch. 1072; *Ex parte Barclay*, L. R., 9 Ch. 576; *Ex parte Tweedy*, *In re Trethowan*, 5 Ch. D. 559.

cases (*t*), whether they are assigned separately or not; (ii) as regards other fixtures and growing crops only where they are separately assigned as above.

What are  
fixtures?

It is often a difficult question of fact to decide what are fixtures, and what are moveables. The question will still arise, although it has been much reduced by the new legislation as to trade machinery in sect. 5.

In a recent case, it has been held that a tramway and steam crane placed upon a quarry and bolted to large stones were fixtures (*u*), and by previous decisions it has been held that articles standing merely by their own weight are not fixtures (*x*), but where part of a machine is a fixture, and another and essential part moveable, the latter is also a fixture (*y*). The fact that the things have been affixed merely for the more convenient user of them, and are removable without injury to the freehold, does not make them the less fixtures (*z*).

Growing  
crops after-  
wards  
severed.

Growing crops, if assigned together with an interest in the land on which they grow, pass to the grantee without registration of such assignment as a bill of sale (*a*); but if afterwards severed by the mortgagor while in his possession are no longer secured to the grantee by the deed, but become personal chattels under it and subject to the act, even though the assignment provides that the mortgagor shall not remove them (*b*).

(*t*) This appears to be the meaning of the section, though there has been no decision upon it as yet. See the section, Appendix.

(*u*) *In re Armytage*, L. R., 14 Ch. D. 379; 42 L. T. 413.

(*x*) *Mather v. Fraser*, 2 K. & J. 536.

(*y*) *Ibid.* And for other decisions as to what are fixtures, see Fisher on Mortgages, 3rd edit. p. 30; and *Metropolitan Counties Society v. Brown*, 26 Beav. 454; *Ex parte Astbury*, L. R., 4 Ch. 630; *Longbottom v. Berry*, L. R., 5 Q. B. 123; *Turner v. Cameron*, *id.* 306; *Holland v. Hodgson*, L. R., 7 C. P. 348; *Haley v. Hammersley*, 3 De G., F. & J. 587; *Reg. v. Inhabitants of the Parish of Lee*, L. R., 1 Q. B. 241.

(*z*) *Climie v. Wood*, L. R., 3 Ex. 257, following *Cullwick v. Swindell*, L. R., 3 Eq. 249; and see *Holland v. Hodgson*, *supra*, and cases there cited.

(*a*) *Brantom v. Griffiths and Ex parte Payne*, *supra*; *In re Phillips*, 16 Ch. D. 104.

(*b*) *Ex parte National Mercantile Bank*, 16 Ch. D. 104; 50 L. J., Ch. 231.

Of those things which the act excepts from the definition of personal chattels a mortgage of a share and interest in a partnership has been held a charge on a "chose in action," and so not affected by the Bills of Sale Act, or by the Bankruptcy Act, 1869, sect. 15 (c); and "stock or produce" has been suggested to mean produce already severed from the land and which might be delivered, although by the covenant or custom it ought not to be removed from the farm (d).

Exceptions;

choses in action;

stock or produce.

Before the commencement of the present act the following transaction, by which a power of distress was given to the mortgagee, was held to be a fraud upon the bankrupt law as being a secret bill of sale. A mortgage of smelting works to secure the repayment of an advance of 55,000*l.* contained, in addition to the ordinary clauses, a covenant by the mortgagee that if the interest was punctually paid as it became due, and all the covenants contained in the deed (other than the covenant for payment of the principal) were performed, and the mortgagor should not have become bankrupt or have taken proceedings for liquidation by arrangement or composition with his creditors, and should not have parted with the possession of the mortgaged property, and should not have ceased to carry on his business thereon, then the mortgagee would not for a period of five years require payment of the principal. And the mortgagor attorned tenant from year to year to the mortgagee, in respect of the mortgaged property, at the yearly rent of 20,000*l.* to be paid half-yearly on the days on which the mortgage debt was payable. The deed was not registered under the Bills of Sale Act. It was admitted that the letting value of the property was not more than 3,000*l.* per annum. Four months after the execution of the mortgage the mortgagor filed a liquidation petition, and the mortgagee afterwards

Sect. 6.

Instruments giving powers of distress.

(c) *Re Bainbridge*, 8 Ch. D. 218.

(d) *Brantom v. Griffiths*, 1 C. P. D. at pp. 355, 357; and see *Hawkins v. Warnd*, 1 C. P. D. 280; *Webster v. Power*, L. R., 2 P. C. 69.

claimed the right to distrain the chattels upon the mortgaged property for a year's rent under the attornment clause:—It was held, that the arrangement was a mere device to give the mortgagee an additional security in the event of the mortgagor's bankruptcy, and was therefore in that event void as a fraud upon the bankrupt law, and that sect. 34 did not protect a distress levied for a mere sham rent (*e*). This principle of the bankrupt law seems to be by this section imported into the Bills of Sale Act, to the operation of which transactions of the above nature, as well as mere bare powers of distress, are now subject. In cases where there is a tenancy the criterion will be what is "a fair and reasonable" rent (*f*).

Sect. 8.  
The requisites.

By sect. 8 (*g*), the requisites of a bill of sale are set forth; they are attestation, registration and the statement of the consideration; and non-compliance with these provisions renders a bill of sale void, as against the persons and in respect of the property therein specified.

i. *Attestation.*

Sect. 10,  
subsect. 1.

The requirement of attestation is a new provision, and the mode of conforming to it is set out in sect. 10, subsect 1 (*h*), which requires a solicitor to attest the execution, and to state in his attestation that he has explained the effect of the bill of sale to the grantor (*i*).

Who may be  
attesting  
witness.

A grantee under a bill of sale, though a solicitor, cannot himself be the attesting witness to such bill of sale (*k*); but the grantee's solicitor (*l*) or his clerk (*m*) may. The subsection is satisfied by the attesting solicitor's statement that he has explained the bill of sale without having done

(*e*) *Ex parte Williams, In re Thompson*, 7 Ch. D. 138.

(*f*) *Stockton Iron Furnace Company, In re*, 10 Ch. D. 335; 48 L. J., Ch. 417. And see *Morton v. Woods*, L. R., 4 Q. B. 293, at p. 307.

(*g*) See Appendix, post. The proposed act provides for the repeal of this section and the enactment of new provisions, see post, p. 565.

(*h*) See Appendix.

(*i*) The attestation may be proved by the attesting solicitor, or by an office copy under sect. 16, see Appendix. See sect. 9 of the proposed act, post, p. 566.

(*k*) *Seal v. Claridge*, 7 Q. B. D. 516.

(*l*) *Perwarden v. Roberts*, W. N. 1882, 38.

(*m*) *Hill v. Kirkwood*, W. N. 1880, 23; 28 W. R. 358. But see the proposed alteration in the law, post, p. 566, sect. 9.

so in fact (*o*), though, semble, in such case the attesting solicitor would render himself liable to civil and penal consequences (*o*).

Section 10, subsection 2 (*p*), provides the mode of registering a bill of sale under this act. It must be registered within seven clear days after its execution. Under the Act of 1854, it was twenty-one days. The original bill of sale, as well as a copy, and the affidavit, are to be *presented* to the registrar; but it seems that only the bill *or* a copy need be *filed* with the affidavit (*q*). The affidavit in addition to the matters hitherto necessary must swear to the due execution and attestation of the bill of sale (*r*). The bill of sale or copy, as the case may be, and the affidavit must be filed at the same time (*s*).

ii. *Registration.*

Sect. 10,  
subsection. 2.

The requirements of a description of the residence and occupation of the grantor and every attesting witness is a re-enactment of the previous law (*t*). The extent of particularity required in the statement of residence is "a reasonably sufficient description of a residence which would guide the inquiries of a person who may be interested in knowing whether the individual whom he proposes to trust has made any disposition of property by way of a bill of sale" (*u*), and of the description of the occupation it has been said, "the object of 17 & 18 Vict. c. 36, s. 1, is to give the assignee and creditor a true idea of the position in life of the assignor, and misdescription or absence of

Description  
of residence  
and occu-  
pation.

(*o*) *Ex parte National Mercantile Bank*, 15 Ch. D. 42.

(*p*) See Appendix. The proposed act provides for local registration, see post, p. 567.

(*q*) See Appendix, sect. 10, subsection. 2, and sect. 12, in *Ex parte Carter*, 12 Ch. D. 908, a copy only seems to have been filed, see *ibid.* page 909. By sect. 16, office copies of the bills of sale or copies filed, and of the affidavits filed therewith, and of the affidavits of renewal on *prima facie* evidence thereof, and of the fact and date of registration.

(*r*) For instances of sufficient and insufficient affidavits, see *Ex parte Carter*, 12 Ch. D. 908; *Sharpe v. Birch*, 8 Q. B. D. 111.

(*s*) See the section, and *Grindell v. Brendon*, 6 C. B., N. S. 698; 28 L. J., Ex. 333.

(*t*) Sect. 10, subsection. 2, see Appendix. And see 17 & 18 Vict. c. 36.

(*u*) *Jones v. Harris*, L. R., 7 Q. B. 157; *Briggs v. Boss*, L. R., 3 Q. B. 268; *Thorpe v. Browne*, L. R., 2 H. L. 220. See also *Heuer v. Cox*, 8 E. & E. 428; 30 L. J., Q. B. 73.

true description in regard to the occupation is substantial" (*r*). It is not sufficient that the bill of sale contains the required descriptions, the affidavit must also contain them (*x*), and the description of every attesting witness is necessary if there are more than one (*y*). If, however, the affidavit sufficiently refers to the description in the bill of sale or copy to which it is annexed, and of which it forms part (*z*), to incorporate it by reference, an incomplete description or even omission of description in such affidavit may be thus supplemented (*a*). A contradictory description, however, or mis-statement cannot be thus corrected by reference (*b*).

The description in the affidavits of the residence and occupation of the grantor must be that which is true at the time of swearing the affidavit, not of giving the bill of sale (*c*). A statement in the affidavit that the grantor "was until lately" a commercial traveller was held insufficient, as being vague and misleading (*d*). It is a sufficient description of the residence of the grantor or attesting witness to state his place of business, or if he be a clerk that of his employer (*e*). An erroneous addition appended to a description itself sufficient will not vitiate it (*f*). Thus "New Street, Blackfriars, in the county of Middlesex," and "Aeton, in the city of London," were held good, a sufficiently certain description remaining after rejection of the erroneous additions (*f*).

(*r*) *Allen v. Thompson*, 1 H. & N. 15; 25 L. J., Ex. 249.

(*x*) *Hatton v. English*, 1 E. & B. 94; 26 L. J., Q. B. 161; *Pickard v. Braby*, 5 H. & N. 9; 29 L. J., Ex. 18; *Brodrick v. Seal*, L. R., 6 C. P. 98.

(*y*) See the subject. Appendix. *Nicholson v. Cooper*, 27 L. J., Ex. 393; *Picard v. Marriage*, 1 Ex. D. 364.

(*z*) *Banbury v. White*, 2 H. & C. 300; 32 L. J., Ex. 258.

(*a*) *Routh v. Roublot*, 1 E. & E. 850; 28 L. J., Q. B. 240; *Jones v. Harris*, *supra*; *Ex parte Mackenzie*, 42 L. J., Bank. 25.

(*b*) *Murray v. Mackenzie*, L. R., 10 C. P. 625.

(*c*) *Button v. O'Neill*, 4 C. P. D. 354, disapproving of *The London and Westminster Loan, &c. Co. v. Chase*, 12 C. B., N. S. 730; 31 L. J., C. P. 310.

(*d*) *Castle v. Downton*, 5 C. P. D. 56.

(*e*) *Grant v. Shaw*, L. R., 7 Q. B. 700; *Attenborough v. Thompson*, 2 H. & N. 559; 27 L. J., Ex. 23; *Blackwell v. England*, 27 L. J., Q. B. 124.

(*f*) *Hewer v. Cox*, 30 L. J., Q. B. 73; *Blount v. Harris*, 4 Q. B. D. 603.

A company has been held properly described as residing at its principal office (*g*). Casual or temporary occupation need not be stated, but only the fixed business or avocation by which a man gains his living (*i*). Where the description is *primâ facie* sufficient, the onus lies on those who say it is not to show that the person is not what he is described (*k*). Apparent absence of occupation will not, if there be in fact occupation, justify non-description of it (*l*), but if no occupation is stated, the onus of proving occupation is on those who impugn the validity of the bill of sale (*m*).

"Gentleman" has been held to sufficiently describe a person who had formerly been a coal agent, but at the time of the bill of sale was out of employment (*n*), and a medical student who had only occasionally acted as a surgeon's assistant (*o*), but not to be a sufficient description of a solicitor's clerk (*p*), though formerly practising as an attorney (*q*), or where he was retained to make out the accounts, and send out the bills of a dissolved firm to which he had been clerk (*r*), nor of a clerk in the audit office, though in respect of the furniture at his private house (*s*).

(*g*) *Shears v. Jacob*, L. R., 1 C. P. 513; and for other decisions upon the sufficiency of the description of residence, see *McCue v. James*, 19 W. R. 158; *Briggs v. Boss*, L. R., 3 Q. B. 268; *Re Hans*, 10 Ir. Ch. Rep. 100; 1 L. T., N. S. 467; *Ex parte McHattie, In re Wood*, 10 Ch. D. 398; 48 L. J., Bank. 26; *Cooper v. Ibberson*, 44 L. T., N. S. 309; *Ex parte Wolfe*, 44 L. T., N. S. 321.

(*i*) *Sutton v. Bath*, 3 H. & N. 382; 27 L. J., Ex. 388; *Ex parte National Mercantile Bank*, 15 Ch. D. at p. 50.

(*k*) *Grant v. Shaw*, L. R., 7 Q. B. 700.

(*l*) *Adams v. Graham*, 33 L. J., Q. B. 31.

(*m*) *Smith v. Chase*, *supra*, at p. 60; and *Sutton v. Bath*, *supra*. But see a doubt expressed on this point in *Castle v. Downton*, 5 C. P. D. at p. 57.

(*n*) *Morewood v. South Yorkshire Railway and River Dun Company*, 3 H. & N. 798; 28 L. J., Ex. 114.

(*o*) *Sutton v. Bath*, *supra*; and see, for other instances of sufficient descriptions, *Smith v. Chase*, 1 C. P. D. 60; *Lamb v. Bruce*, 45 L. J., Q. B. 538; *Grant v. Shaw*, L. R., 7 Q. B. 700; *Ex parte National Deposit Bank*, 26 W. R. 624 (C. A.).

(*p*) *Dryden v. Hope*, 9 W. R. 18; *Brodrick v. Scale*, L. R., 6 C. P. 98.

(*q*) *Tuton v. Sanoner*, 27 L. J., Ex. 293.

(*r*) *Beale v. Tennant*, 29 L. J., Q. B. 188.

(*s*) *Allen v. Thompson*, 25 L. J., Ex. 249.

An attesting witness's description of himself as deponent is a sufficient affidavit of his description (*t*). An affidavit describing the grantor's residence and occupation to the best of the belief of the deponent was held sufficient (*u*). Shareholders in a company cannot be attesting witnesses to a bill of sale given by the company (*x*).

Sect. 10,  
subsect. 3.  
Defeasance,  
condition or  
declaration of  
trust.

If a bill of sale is given subject to a defeasance, condition or declaration of trust not inserted in the body of the bill, such defeasance, condition or declaration of trust must be written on the same deed as the bill itself, and before registration, and must be also set forth in the copy (*z*). This is a re-enactment of the same provision in sect. 2 of the Act of 1854, under which it has been decided that it is not necessary to disclose, on the face of the bill of sale, the fact that the person appearing as the grantee is only the trustee for the person who really lent the money (*a*); that when a bill of sale was given to secure a sum of money payable on demand, and a parol agreement existed for the payment of the debt by small weekly instalments, this parol agreement amounted to a defeasance or condition within the act, and the want of registration of it avoided the bill of sale against the trustee in bankruptcy (*b*); that, where a bill of sale was given to secure 130*l.*, 100*l.* only being advanced, 30*l.* being charged for interest and bonus, and a written memorandum was signed at the same time by the mortgagor engaging to pay the 30*l.* in full, notwithstanding the money secured might be repaid on the mortgagee's rights enforced before the expiration of the time limited for payment, this memorandum was neither defeasance, trust, nor condition within the meaning of the act, and did not in any way affect the validity of the bill

(*t*) *Sladden v. Serjeant*, 1 F. & F. 322; 27 L. J., Ex. 392; *Wilcoron v. Searby*, 29 L. J., Ex. 154.

(*u*) *Roe v. Bradshaw*, L. R., 1 Ex. 106.

(*x*) *Shears v. Jacob*, L. R., 1 C. P. 513; *Deffell v. White*, L. R., 2 C. P. 144.

(*z*) Sect. 10, subs. 3, post, Appendix.

(*a*) *Robinson v. Collingwood*, 17 C. B., N. S. 777.

(*b*) *Ex parte Southam*, L. R., 17 Eq. 578.

of sale (c). "If this is in substance anything, it is an additional bill of sale, of which the grantee cannot avail himself if it is not registered, but the non-registration of an additional bill of sale does not affect a previous registered one" (d). "A condition in every case denotes something which prejudicially affects the interest of the donee" (e), or, in other words, "the subsection being meant to provide only for cases where some benefit is reserved to the grantor" (f). Condition.

Provision is made in sect. 10 that where two or more bills of sale are given in respect of the same chattels they shall have priority by the date of their registration (g). This applies not only as between registered but as between registered and unregistered bills of sale (h). Registration, therefore, is now necessary as between mortgagees, even within the seven days' limit. Under the Act of 1854, however, the operation of which is preserved as to bills of sale executed before 1st January, 1879, the priorities of bills of sale in respect of the same goods were determined by the date of their execution, for under that act, as under the present (i) independently of the priority clause which is new, registration was necessary only as against the persons mentioned in the act (k). A bill of sale, therefore, though unregistered gave a valid title as against a subsequent registered bill of sale (l), but this rule was affected by the event of the grantor's bankruptcy, or of execution upon his goods, in which cases the unregistered bill would be entirely displaced (except as regards any goods the holder might have seized under it before the bankruptcy Priority.  
41 & 42 Vict.  
c. 31, s. 10.  
  
17 & 18 Vict.  
c. 36.

(c) *Ex parte Collins, In re Lees*, L. R., 10 Ch. 367.

(d) *Ibid.*, per James, L. J.

(e) *Ibid.*, at p. 372.

(f) *Robinson v. Collingwood*, *supra*.

(g) Sect. 10. See post, Appendix.

(h) *Conelly v. Steer*, 7 Q. B. D. 520; *Lyons v. Tucker*, *id.* 523.

(i) *Davis v. Goodman*, L. R., 5 C. P. D. 128; 49 L. J., C. P. 344.

(k) *Ex parte Allen, In re Middleton*, L. R., 11 Eq. 211; *Hills v. Shepherd*, 1 F. & F. 191; *Barker v. Aston*, *id.* 192. The proposed act, however, provides for the absolute avoidance of all bills of sale, unless attested and registered. See p. 566.

(l) *Richards v. James*, L. R., 2 Q. B. 285, at p. 291.

or execution) (*m*), and the later registered bill would be good against the trustee or execution creditor, and thus obtain a priority which, but for such bankruptcy or execution, it would not have had (*n*).

Transfer or assignment of registered bill of sale.

A transfer or assignment of a registered bill of sale need not be registered. Thus where by a deed, between the two parties to a bill of sale (part of the sum secured by which had been paid off) and the plaintiff, the security was transferred and the goods assigned to him on his paying off the amount remaining due on the bill, and making a further advance to the grantor; it was held by the Court of Appeal that, whether or not the deed was an effectual security, without registration, for the fresh advance, it was, as to the amount which remained due on the former bill of sale, a transfer and valid to that extent without registration under the Bills of Sale Act, 1878, so as to entitle the plaintiff to the goods (*o*).

Sect. 11.  
Renewal of registration.

Sect. 11 (*p*) provides for the renewal of registration every five years. A transfer or assignment of a bill of sale does not of itself necessitate a renewal of registration, and we have seen that such transfer or assignment does not itself require registration (*q*). Assignees of bills of sale are in the same position as their assignors. If a bill of sale is assigned before registration it must be registered by the assignee to make it good, if after registration the assignee must renew the registration in due course to keep it good (*r*). The provisions of this act as to renewal of registration are retrospective (*s*).

Sect. 14.  
Rectification of register

Sect. 14 empowers a judge of the High Court to order rectification of the register under the circumstances therein

(*m*) *In re Barraud, Ex parte Cochrane*, 3 Ch. D. 334; 4 Ch. D. 23.

(*n*) *In re Barraud, Ex parte Cochrane*, 3 Ch. D. 324; 4 Ch. D. 23; *Richards v. James*, L. R., 2 Q. B. 285; *Edwards v. English*, 7 E. & B. 564; 26 L. J., Q. B. 193.

(*o*) *Horne v. Hughes*, 6 Q. B. D. 676.

(*p*) Post, Appendix.

(*q*) Sect. 10, post, Appendix. *Horne v. Hughes*, supra.

(*r*) *Karet v. Kasher Meat Supply Association*, 2 Q. B. D. 361.

(*s*) Sect. 23, post, Appendix.

specified, and to extend the time for registration in that behalf (*t*). and extension of time.

Sect. 22 provides for registration when the time expires on a Sunday, or other day when the office is closed (*u*). Sect. 22.

Great care must be taken in accurately complying with the requirement that the consideration must be set forth (*x*). iii. The consideration.  
It must be set forth in the body of the deed; if not truly stated there, a correct statement contained in a receipt at the foot of the deed will not satisfy the statute, such receipt not being part of the deed (*y*). The consideration required to be stated is that which the grantor receives for giving the bill of sale, not necessarily the amount to be secured by the deed (*z*). If part of the consideration stated in a bill of sale is, by the grantor's direction given at the time of the execution of the deed, applied in satisfaction of a then existing debt owing by him, the money so paid may be properly stated in the deed to be then paid to him (*a*).

The amount of the expenses incident to the preparation of the bill of sale, is not such a "then existing debt owing by the grantor," and the deduction of it from the amount stated to be advanced will invalidate the bill of sale (*b*); so also will deductions by way of future interest (*c*), bonus, or commission (*d*). Subject to the above restrictions, and to the necessity of setting forth the real consideration, the act does not require a collateral agreement between the grantor and grantee as to the application of the considera-

(*t*) Post, Appendix, sect. 14.

(*u*) Post, Appendix.

(*x*) Sect. 8, see Appendix.

(*y*) *Ex parte Charing Cross Bank*, 16 Ch. D. 35.

(*z*) *Ex parte Challinor*, 16 Ch. D. 260.

(*a*) *Ex parte Frith*, *In re Cowburn*, W. N. 1882, p. 5, overruling *Ex parte National Mercantile Bank*, 15 Ch. D. 42, and *Ex parte Challinor*, 16 Ch. D. 260, so far as they decided that the expenses incidental to the deed might be deducted from the amount stated to be advanced. And see *In re Spindler*, 19 Ch. D. 98.

(*b*) *Id.*, and see *Ex parte Rolph*, *In re Spindler*, 19 Ch. D. 98.

(*c*) *Ex parte Charing Cross Bank*, 16 Ch. D. 35; *Re Parker*, 44 L. T. 113.

(*d*) *Hamilton v. Chaine*, 7 Q. B. D. 1, 319.

tion to be set forth (*e*), and it is quite competent to the grantor to direct what shall be paid to himself, and what shall be paid to others on his behalf (*f*). A distinction has also been made between strict literal accuracy, and accuracy with respect to either the legal or the business or mercantile effect of the matters set forth (*g*). Thus, where the consideration was stated to be 7,350*l.* now paid, though in fact no money passed, but during several years there had been several loans and advances to the grantor by the grantee, and upon a statement of account between them this sum was found to be the balance due, which sum with interest the grantor by the bill of sale promised to pay to the grantee on demand, by notice in writing;—it was held, that the consideration was stated with substantial accuracy, the legal and mercantile and business effect of the transaction being given, viz., that the giving of the deed wiped out the old debt, and constituted the balance thus found due a new debt payable only after demand in writing—thus giving a new credit (*g*).

#### Avoidance.

(1) As against certain persons only.

Non-compliance with the requirements of the act as to attestation, registration and truthful statement of consideration renders a bill of sale void, not as against all the world, but only as against trustees or assignees in bankruptcy or liquidation, or under assignments for the benefit of the creditors of the grantor; Sheriffs' officers or other persons seizing in execution of any process of Court; Execution creditors (*h*). This want of attestation and explanation does not avoid a bill of sale as between grantor and grantee (*i*); and in respect of chattels which after the expiration of seven days from the giving a bill of sale of them are found, in the event of a

(2) In respect of goods in possession, or apparent possession, of grantor.

(*e*) *Ex parte National Mercantile Bank*, 15 Ch. D. 42; *Ex parte Rolph*, *In re Spindler*, 19 Ch. D. 98.

(*f*) *Hamlyn v. Bettley*, 5 C. P. D. 327.

(*g*) *Credit Company v. Pott*, 6 Q. B. D. 295.

(*h*) Sect. 8, see Appendix. See, however, sect. 8 of the proposed act, p. 565.

(*i*) *Davis v. Goodman*, 5 C. P. D. 128; 49 L. J., C. P. 344; and see *In re Knott*, 7 Ch. D. 549, n. 1; *In re d'Epineuil*, 20 Ch. D. 217.

bankruptcy or liquidation *petition being filed* (j), or an assignment made for the benefit of creditors, or an execution levied, in the possession or apparent possession of the grantor (k).

Apparent possession is defined by sect. 4 (l). The words of this interpretation clause are the same as in the Act of 1854, and the meaning of them has been said to be, "that the goods shall be deemed to be in the apparent possession of the vendor as long as they are on the premises occupied by him, if nothing more has been done to them than mere formal possession taken" (m). Thus, where a person sold by a written agreement some timber on a private wharf and some timber on a public wharf, and by another written agreement some furniture in a house belonging to him, part of which he had previously used as an office, and occasionally slept in; and the vendee took possession of the key of the private wharf and sold some of the timber lying there, and took persons to the public wharf (the key of which remained in the hands of the wharfinger) to look at the timber with a view to sale, and occasionally used the rooms, the use of which the vendor had discontinued, and paid the servant's wages as stipulated; it was held that there was no possession or apparent possession of the timber either at the private or public wharf, or of the furniture within the Bills of Sale Act, so as to render them liable to seizure under an execution against the vendor. Bramwell, B., saying, "Here a great deal more had been done to them than formal possession taken" (n).

It is "formal possession" only, for instance, where a

Distinction between for-

(j) Under the Act of 1854 it was as to goods in the apparent possession of the grantor at the time of the bankruptcy, and the title of the trustee had relation back to the commencement of the bankruptcy. *Ex parte Attwater*, 5 Ch. D. 27. The protecting clauses of the Bankruptcy Act, 1869, ss. 94, 95, have no operation as regards a transaction which is made void by the Bills of Sale Act. *Ibid.*

(k) Sect. 8, see Appendix. See sects. 8 and 9 of the proposed act, post, pp. 565, 566.

(l) See Appendix.

(m) *Gough v. Everard*, 32 L. J., Ex. 210.

(n) *Ibid.*, and *Smith v. Wall*, 18 L. T., N. S. 183.

mal and real  
possession.

broker is simply put in to prevent removal, and allows the debtor and his family to use the goods and everything to go on as before (*o*). But dealing with the goods as by packing them up for removal is among other things an assertion of actual possession (*p*), and so where the grantee of a bill of sale takes possession of the goods comprised in it, and advertizes them for sale as the goods of the grantor sold under a bill of sale, the goods, though still in the house of the grantor, are no longer in his apparent possession (*q*); but where, in a similar case, a sale was announced by placards, from which, however, it could not be inferred that the sale was made under a bill of sale, and not by the grantor himself, it was held there was nothing more than formal possession (*r*).

There must be  
actual *de facto*  
occupation.

The "occupation" referred to in the definition of apparent possession (*s*) is actual *de facto* occupation (*t*). Thus the grantor of a bill of sale, not registered, was tenant of rooms where the goods comprised in it were, but he resided elsewhere. Having made default, he gave the keys of the rooms to the grantee, who opened them and put his name on some of the goods. None, however, were removed:—Held, that the grantor did not "occupy" within the meaning of the act, and that the bill of sale was valid as against the execution creditor (*u*).

Demand of  
possession not  
possession by  
grantee.

When the grantor, after default in payment, and after demand of possession and threat by the grantee, remained in possession until the filing a liquidation petition, it was held that the grantee's title to and demand of possession did not take the goods out of the possession of the grantor

(*o*) *Ex parte Jay*, L. R., 9 Ch. 697, at p. 704; *Ex parte Hooman*, L. R., 10 Eq. 63; *Ex parte Lewis*, L. R., 6 Ch. 626; *Seal v. Claridge*, 7 Q. B. D. 516.

(*p*) *Ex parte Jay*, *supra*. And see *Ex parte Mortlock*, *In re Basham*, W. N. 1881, p. 161.

(*q*) *Emanuel v. Bridger*, L. R., 9 Q. B. 286.

(*r*) *Ex parte Lewis*, L. R., 6 Ch. 626. And see also *Pickard v. Marriage*, 1 Ex. D. 364, and *Ashton v. Blackshaw*, L. R., 9 Eq. 510.

(*s*) Sect. 4, post, Appendix.

(*t*) *Robinson v. Briggs*, L. R., 6 Ex. 1.

(*u*) *Ibid*. But see *Ancona v. Rogers*, *infra*.

within the act (*x*). *Semble*, if, in the same circumstances, the goods were held for the grantor by a bailee, the grantor would still be in possession within the act (*y*).

Possession by the sheriff under an execution issued either by the grantee or by a third person, even though the grantee has himself taken no possession, takes the goods out of the apparent possession of the grantor (*z*). Possession by sheriff negatives apparent possession.

Under the Act of 1854, goods that were left in the apparent possession of a grantor of a bill of sale, but which were protected by the registration of the bill, were still liable to be claimed by the trustee in bankruptcy by the application of the order and disposition clause of the Bankruptcy Act, 1869 (*a*). By sect. 20 of the present act, chattels comprised in a duly-registered bill of sale are exempted from the application of that principle (*b*). Order and disposition.  
Sect. 20.

By sect. 9 subsequent bills of sale executed in renewal of prior unregistered bills within or on the expiration of seven days from their execution are rendered void, except so far as they may be *bonâ fide* given to correct mistake (*c*). This has put an end to the practice which prevailed under the former act of executing successive bills of sale each within twenty-one days from the execution of a prior bill, and so avoiding the necessity of registration (*d*). It has been held, however, that this section does not apply to duplicate bills of sale executed *after* the expiration of the seven days therein mentioned (*e*). Of course, in the event of bankruptcy, a duplicate or the last bill of sale of a series Sect. 9.  
Duplicate bills of sale.

(*x*) *Ancona v. Rogers*, 1 Ex. D. 285.

(*y*) *Ibid.* But this seems doubtful and was not necessary for the decision of the case.

(*z*) *Ex parte Saffery*, 16 Ch. D. 668; *Ex parte Mutton*, L. R., 14 Eq. 178, not followed.

(*a*) 32 & 33 Vict. c. 71, s. 15, subs. 5.

(*b*) See post, Appendix. The proposed act, however, provides for the repeal of this sect. See post, p. 565.

(*c*) See sect. 9, post, Appendix.

(*d*) *Smale v. Burr*, L. R., 8 C. P. 64; *Ramsden v. Lupton*, L. R., 9 Q. B. 17; *Ex parte Harris*, L. R., 8 Ch. 48.

(*e*) *Carrard v. Meek*, 43 L. T. 760.

would be liable to be avoided, as being given for a past consideration (*f*).

Independently of the provisions of the Bills of Sale Act the grantee of goods under a bill of sale is subject to certain risks affecting the value of his security.

1. Landlord's right of distress.

2. Grantor left in possession of goods of trade.

3. The bankruptcy laws.

1. The landlord's right of distress is paramount.

2. Where the goods which are the subject of the bill of sale are trade goods or things which a person in possession may be presumed to have the right to dispose of in the ordinary course of business, if such goods are left in the possession of the grantor a sale by him in the ordinary course of his trade or business will give to a *bonâ fide* vendee, who has taken possession of them, a good title to them against the grantee under his bill of sale, although registered (*g*). If the sale to and removal by the vendee be not in the ordinary course of business he will have no title against the bill of sale holder (*h*).

3. Under the bankruptcy laws a bill of sale, though complying with all the requisites of the act, may sometimes be declared void as a fraud upon those laws.

Thus, a conveyance of a person's whole (*i*) property to secure a past debt is an act of bankruptcy, and a bill of sale so given will be declared void against the trustee in bankruptcy (*k*). Within the principle above mentioned, and therefore void against the trustee, is a bill of sale which is the last of a series of successive bills given in renewal or substitution (*l*). A bill of sale, however,

(*f*) *Ex parte Cohen*, L. R., 7 Ch. 20; *Ex parte Stevens*, L. R., 20 Eq. 786; *Ex parte Furber*, 6 Ch. D. 181; *Ex parte Payne*, 11 Ch. D. 539.

(*g*) *National Mercantile Bank v. Hampson*, 5 Q. B. D. 177; *Taylor v. M'Keand*, 5 C. P. D. 358.

(*h*) *Payne v. Fern*, 6 Q. B. D. 620; *Taylor v. M'Keand*, *supra*.

(*i*) Book debts must be taken into consideration. *Ex parte Burton*, 13 Ch. D. 102; and see *Ex parte Hawker*, L. R., 7 Ch. 214.

(*k*) *Ex parte Hawker*, *supra*; *In re Wood*, L. R., 7 Ch. 302; *Ex parte Fisher*, *id.* 636; *Ex parte Bolland*, 8 Ch. D. 230; *Ex parte Kilner*, 13 Ch. D. 245; *Ex parte Burton*, *id.* 102; *Crawcour v. Salter*, 18 Ch. D. 30. And see 32 & 33 Vict. c. 71, s. 6, subs. 2. Independently of the bankruptcy law a past debt is a sufficient consideration, see cases cited.

(*l*) *Vide ante*, p. 563. And see *Ex parte Cohen*, L. R., 7 Ch. 20; *Ex parte Stevens*, L. R., 20 Eq. 786; *Ex parte Furber*, 6 Ch. D. 181; *Ex parte Payne*, 11 Ch. D. 539.

will not be void as given for a past debt if there be at the same time a substantial fresh advance, of which the debtor has the advantage (*m*), nor if it is executed in pursuance of an agreement made at the time the consideration arose or the money was advanced (*n*). But such agreement to give the bill of sale must be absolute and peremptory (*o*); if made upon a condition that the bill was not to be executed till the lender "lost confidence" in the borrower (*p*), or if the execution of the bill of sale to be given in pursuance of it is purposely postponed until the trader is in a state of insolvency, in order to prevent the destruction of his credit, the agreement will not support such bill of sale against the trustee in bankruptcy (*q*).

NOTE.—There is a bill of this session in progress entitled the Bills of Sale Act (1878) Amendment Bill, by which, if passed into law, very considerable changes will be effected with regard to bills of sale.

The principal provisions of it are the following:—

"Every bill of sale made or given in consideration of any sum under fifty pounds shall be void" (sect. 12).

The repeal of ss. 8 and 20 of the Act of 1878, and all other enactments of that act which are inconsistent with this act; but the validity of anything done or suffered under that act before the commencement of this, is not to be affected (sect. 17).

In place of sect. 8 of the Act of 1878 it proposes that—

"Every bill of sale shall be duly attested, and shall be registered under the principal act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein" (sect. 8).

Bill of sale under 50*l*. to be void.

Repeal of ss. 8 and 20 of Act of 1878.

Bill of sale to be void unless attested and registered.

(*m*) *Hutton v. Cruttwell*, 1 E. & B. 15; 22 L. J., Q. B. 78; *Lomax v. Buxton*, L. R., 6 C. P. 107; *Ex parte Sheen*, *In re Winstanley*, 1 Ch. D. 560; *Ex parte King*, 2 Ch. D. 256.

(*n*) *Ex parte Homan*, L. R., 12 Eq. 598; *Ex parte Fisher*, *supra*; *In re Jackson*, *Ex parte Hall*, 4 Ch. D. 682.

(*o*) *Ex parte Fisher*, *supra*; *Ex parte Burton*, *supra*; *Ex parte Kilner*, *supra*.

(*p*) *Ex parte Burton*, 13 Ch. D. 102.

(*q*) *Ex parte Fisher*, L. R., 7 Ch. 636; *Ex parte Kilner*, 13 Ch. D. 245; *Ex parte Bolland*, *In re Gibson*, *supra*.

This will render a bill of sale void for want of due attestation, registration or true statement of the consideration absolutely in respect of all goods comprised in it.—And the decisions of *Davis v. Goodman*, 5 C. P. D. 128; *In re Knott*, 7 Ch. D. 549, n. (1); and *In re D'Epineul*, 20 Ch. D. 217, will no longer apply.

The bill further proposes that—

“A bill of sale shall be void unless the same is executed in the presence of a person who has authority to take oaths in the Supreme Court of Judicature in England, and, if the bill is executed in England, who is also a certificated solicitor, and unless such person shall carefully explain to the grantor the nature and effect of the bill of sale, and shall state in the attestation of the execution of the bill of sale that he has before the execution of the bill of sale made such explanation; and further, if the bill is executed in England, that he was appointed by the grantor to be and is the solicitor of the grantor and not the solicitor of the grantee for this purpose” (sect. 9).

That—

“Personal chattels assigned under a bill of sale shall not be liable to seizure by the grantee for any other than the following causes:—

- (1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment;
- (2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rents, rates, or taxes;
- (3.) If the grantor shall fraudulently remove or suffer the said goods, or any of them, to be removed from the premises;
- (4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, deliver to him his last receipts for rent, rates, and taxes” (sect. 7).

That a bill of sale shall be void in respect of any personal chattels not enumerated in the schedule which is to be annexed to it (sect. 4); and that a bill of sale shall be void in respect of property after acquired, or of which the grantor was not true owner at the time of execution (sect. 5); except—

- “(1) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed;
- “(2) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant or trade machinery are used in, attached to or brought upon any land, farm, factory, workshop, shop, house, warehouse or other place in substitution for any of the like fixtures, plant or trade machinery enumerated in the schedule to such bill of sale” (sect. 6).

The renewed application of the order and disposition doctrine of the bankruptcy law, which had been expressly excepted in the Act of 1878 (sect. 20 to be repealed, see *supra*), is also proposed in sect. 13 of the bill,

“Where a person, within twelve months after he has executed a bill

Ante, p. 560  
(n. 1).

Execution of  
bills of sale.

Bill of sale  
with power to  
seize except in  
certain events  
to be void.

Void in  
respect of  
chattels not  
specified.

After-  
acquired  
property.  
Exceptions.

See ante,  
p. 548.

Order and  
disposition.  
Ante, p. 563.  
Bill of sale  
void as

of sale, becomes subject to the provisions of the law for the time being in force relating to bankruptcy or any similar proceeding, whether he is adjudged bankrupt or has his affairs liquidated by arrangement, or enters into a composition or otherwise, such bill of sale shall, as against the trustee or other person entitled to the estate of such person under the said law, be void in respect of any personal chattels which, at or after the commencement of the bankruptcy or liquidation, or other date, at or to which the proceedings under the said law are deemed to commence or to relate, are in the possession or apparent possession, or the order and disposition of the person executing such bill of sale."

against trustee in bankruptcy.

And an analogous provision with respect to bills of sale given by companies is contained in sect. 15:—

"Where a company is wound up under the Companies' Act, 1862, and the acts amending the same, any bill of sale given by such company within twelve months next preceding the commencement of the winding up shall, as against the liquidators of the company, be void in respect of any personal chattels which, at or after the commencement of the winding up, are by the consent and permission of the true owner in the possession or apparent possession, or the order and disposition of the said company."

Bill of sale to be void as to personal chattels in certain cases.

The security afforded by a bill of sale is to be further diminished by a provision that—

"A bill of sale to which this act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of poor and other parochial rates."

Further, a grantee of a bill of sale (whether registered before or after the commencement of this act) who has seized goods under it is not to be allowed to remove them from the premises on which they were seized, or sell them until the expiration of five clear days from such seizure.

Bill of sale not to protect chattels against poor and parochial rates.

These provisions, together with a provision for the local registration of the contents of bills of sale, and amended arrangements for inspection of the register from the substance of the proposed act, and by them, if they become law, the security afforded by bills of sale will be seriously affected.

Grantee not to remove goods for five days after seizure.



# AN APPENDIX

CONTAINING

THE STATUTES IN FORCE RELATING TO BANKERS,  
BANK NOTES AND BANKING COMPANIES IN ENG-  
LAND, SCOTLAND AND IRELAND RESPECTIVELY.

## I. RELATING TO ENGLAND, SCOTLAND AND IRELAND.

17 GEO. 3, c. 30.

*An Act for further restraining the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, within that Part of Great Britain called England....* 574

39 & 40 GEO. 3, c. 28, s. 15.

*An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year 1800* ..... 578

48 GEO. 3, c. 88.

*An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, in Eng-land* ..... 579

55 GEO. 3, c. 184.

*An Act for repealing the Stamp Duties on Deeds, Law Proceed-ings and other written or printed Instruments, &c. . .* 583

7 GEO. 4, c. 6.

*An Act to limit, and after a certain Period to prohibit, the issuing of Promissory Notes, under a limited Sum, in Eng-land* ..... 585

7 GEO. 4, c. 46.

*An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the 39th and 40th Years of the Reign of his late Majesty King Geo. 3, intituled "An Act for establishing an Agree-ment with the Governor and Company of the Bank of Eng-land for advancing the Sum of Three Millions towards the Supply for the Service of the Year 1800," as relates to the same* ..... 588

## 9 GEO. 4, c. 23.

*An Act to enable Bankers in England to issue certain unstamped Promissory Notes and Bills of Exchange, upon payment of a Composition in lieu of Stamp Duties thereon* ..... 600

## 9 GEO. 4, c. 65.

*An Act to restrain the Negotiation, in England, of Promissory Notes and Bills, under a limited Sum, issued in Scotland or Ireland* ..... 606

## 3 &amp; 4 WILL. 4, c. 83.

*An Act to compel Banks issuing Promissory Notes payable to Bearer on Demand, to make Returns of their Notes in Circulation, and to authorize Banks to issue Notes payable in London for less than 50*l.** ..... 607

## 3 &amp; 4 WILL. 4, c. 98.

*An Act for giving to the Corporation of the Governor and Company of the Bank of England certain Privileges, for a limited Period, under certain Conditions* ..... 609

## 1 &amp; 2 VICT. c. 96.

*An Act to amend, until the end of the next Session of Parliament, the Law relative to Legal Proceedings by certain Joint Stock Banking Companies against their own Members, and by such Members against the Companies* ..... 615

## 3 &amp; 4 VICT. c. 111.

*An Act to continue, until the 31st day of August, 1842, and to extend the Provisions of an Act of the 1st and 2nd Years of her present Majesty, relating to Legal Proceedings by certain Joint Stock Banking Companies against their own Members, and by such Members against the Companies* 617

## 4 VICT. c. 14.

*An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships* ..... 618

## 7 &amp; 8 VICT. c. 32.

*An Act to regulate the Issue of Bank Notes, and for giving to the Governor and Company of the Bank of England certain Privileges for a limited Period*..... 619

## 8 &amp; 9 VICT. c. 76.

*An Act . . . . . to amend an Act of the last Session of Parliament for regulating the Issue of Bank Notes in England* ..... 633

## 16 &amp; 17 VICT. c. 59.

*An Act to repeal certain Stamp Duties, and to grant others in lieu thereof; to amend the Laws relating to Stamp Duties; and to make perpetual certain Stamp Duties in Ireland* 635

## 17 &amp; 18 VICT. c. 83.

*An Act to amend the Laws relating to the Stamp Duties* .. 635

## 19 VICT. c. 20.

*An Act to continue certain Compositions payable to Bankers who have ceased to issue Bank Notes* ..... 636

## 19 &amp; 20 VICT. c. 100.

*An Act respecting the Election of Directors of Joint Stock Banks* ..... 637

## 23 &amp; 24 VICT. c. 111.

*An Act for granting to her Majesty certain Duties on Stamps, and to amend the Laws relating to Stamp Duties* .... 638

## 24 &amp; 25 VICT. c. 91.

*An Act to amend the Laws relating to the Inland Revenue.* 638

## 25 &amp; 26 VICT. c. 89.

*An Act for the Incorporation, Regulation and Winding-up of Trading Companies and other Associations* ..... 639

## 27 &amp; 28 VICT. c. 32.

*An Act to enable certain Banking Copartnerships which shall discontinue the issue of their own Bank Notes to sue and be sued by their Public Officer* ..... 641

## 30 VICT. c. 29.

*An Act to amend the Law in respect of the Sale and Purchase of Shares in Joint Stock Banking Companies* ..... 642

## 33 &amp; 34 VICT. c. 97.

*An Act for granting certain Stamp Duties in lieu of Duties of the same kind now payable under various Acts and consolidating and amending Provisions relating thereto* .. 643

## 34 VICT. c. 17.

*An Act to make Provision for Bank Holidays, and respecting Obligations to make Payments, and do other Acts on such Bank Holidays* ..... 652

## 34 &amp; 35 VICT. c. 74.

*An Act to abolish Days of Grace in the case of Bills of Exchange and Promissory Notes payable at Sight or on Presentation* ..... 654

## 39 &amp; 40 VICT. c. 81.

*An Act for amending the Law relating to Crossed Cheques* 654

## 40 VICT. c. 2.

*An Act to provide for the Preparation, Issue and Payment of Treasury Bills, and to make further Provision respecting Exchequer Bills* ..... 655

## 40 &amp; 41 VICT. c. 59.

*An Act to amend the Law with respect to the Transfer of Stock forming part of the Public Debt of any Colony, and the Stamp Duty on such Transfer* ..... 658

## 41 &amp; 42 VICT. c. 31.

*An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels* ..... 660

## 42 VICT. c. 11.

*An Act to amend the Law of Evidence with respect to Bankers' Books* ..... 668

## 42 &amp; 43 VICT. c. 76.

*An Act to amend the Law with respect to the Liability of Members of Banking and other Joint Stock Companies, and for other purposes* ..... 670

## 43 VICT. c. 11.

*An Act to make Powers of Attorney and Requests for Transmission of Dividend Warrants by Post relating to India Five per Cent. Stock applicable to India Four per Cent. Stock* ..... 673

## 43 &amp; 44 VICT. c. 20.

*An Act to grant and alter certain Duties of Inland Revenue, and to amend the Laws in relation to certain other Duties* 674



## II. RELATING TO SCOTLAND EXCLUSIVELY.

## 5 GEO. 3, c. 49.

*An Act to prevent the Inconveniences arising from the present Method of issuing Notes and Bills by the Banks, Banking Companies and Bankers in that Part of Great Britain called Scotland* ..... 674

## 7 GEO. 4, c. 67.

*An Act to regulate the Mode in which certain Societies or Copartnerships for Banking in Scotland may sue and be sued* ..... 675

## 8 &amp; 9 VICT. c. 38.

*An Act to regulate the issue of Bank Notes in Scotland* .. 682

## 16 &amp; 17 VICT. c. 63, s. 7.

- An Act to repeal certain Stamp Duties and to grant others in lieu thereof, to give Relief with respect to the Stamp Duties on Newspapers and Supplements thereto, to repeal the Law on Advertisements, and otherwise to amend the Laws relating to Stamp Duties* ..... 693

## 17 &amp; 18 VICT. c. 73.

- An Act to amend the Acts for the Regulation of Joint Stock Banks in Scotland* ..... 694

## 19 VICT. c. 3.

- An Act to extend the Period for which her Majesty may grant Letters Patent of Incorporation to Joint Stock Banks in Scotland existing before the Act of 1846* ..... 695



## III. RELATING TO IRELAND EXCLUSIVELY.

## 55 GEO. 3, c. 100.

- An Act to provide for the Collection and Management of Stamp Duties payable on Bills of Exchange, Promissory Notes, Receipts and Game Certificates, in Ireland* ..... 696

## 1 &amp; 2 GEO. 4, c. 72.

- An Act to establish an Agreement with the Governor and Company of the Bank of Ireland for advancing the Sum of 500,000*l.* Irish Currency, and to empower the said Governor and Company to enlarge the Capital Stock or Fund of the said Bank to Three Millions* ..... 697

## 6 GEO. 4, c. 42.

- An Act for the better Regulation of Copartnerships of certain Bankers in Ireland* ..... 698

## 9 GEO. 4, c. 80.

- An Act to enable Bankers in Ireland to issue certain unstamped Promissory Notes, upon Payment of a Composition in lieu of the Stamp Duties thereon* ..... 710

## 9 GEO. 4, c. 81.

- An Act for making Promissory Notes payable, issued by Banks, Banking Companies or Bankers in Ireland, at the Places where they are issued* ..... 716

11 GEO. 4 & 1 WILL. 4, c. 32.

*An Act to explain two Acts of his present Majesty for establishing an Agreement with the Governor and Company of the Bank of Ireland, for advancing 500,000*l.* Irish Currency, and for the better Regulation of Copartnerships of certain Bankers in Ireland* ..... 717

5 & 6 VICT. c. 82.

*An Act to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same, until the 10th day of October, 1845* ..... 725

8 & 9 VICT. c. 37.

*An Act to regulate the issue of Bank Notes in Ireland, and to regulate the Repayment of certain Sums advanced by the Governor and Company of the Bank of Ireland for the Public Service* ..... 726

16 & 17 VICT. c. 59, s. 20.

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30 & 31 VICT. c. 89.

*An Act to render perpetual an Act passed in the Session holden in the 27th and 28th Years of her present Majesty, intituled "An Act to permit, for a limited Period, Compositions for Stamp Duty on Bank Post Bills of 5*l.* and upwards in Ireland"* ..... 742

## I. RELATING TO ENGLAND, SCOTLAND AND IRELAND.

*Restraining the Negotiation of Bills and Notes under a Limited Sum.*

17 GEO. 3, c. 30.

*An Act for further restraining the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, within that part of Great Britain called England.*

Preamble.

Act 15 Geo. 3  
recited.

WHEREAS by a certain act of parliament, passed in the 15th year of the reign of his present Majesty (intituled "An Act to restrain the negotiation of promissory notes and inland bills of exchange, under a limited sum, within that part of Great

Britain called England"), all negotiable promissory or other notes, bills of exchange, or drafts, or undertakings in writing, for any sum of money less than the sum of 20s. in the whole, and issued after the 24th day of June, 1775, were made void, and the publishing or uttering and negotiating of any such notes, bills, drafts, or undertakings, for a less sum than 20s., or on which less than that sum should be due, was, by the said act, restrained under certain penalties or forfeitures therein mentioned; and all such notes, bills of exchange, drafts, or undertakings in writing, as had issued before the said 24th day of June, were made payable upon demand, and were directed to be recovered in such manner as is therein also mentioned: and whereas the said act hath been attended with very salutary effects, and in case the provisions therein contained were extended to a further sum (but yet without prejudice to the convenience arising to the public from the negotiation of promissory notes and inland bills of exchange for the remittance of money in discharge of any balance of account or other debt), the good purposes of the said act would be further advanced; be it therefore enacted, &c., that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of 20s., or any sum of money above that sum and less than 5*l.*; or on which 20s., or above that sum and less than 5*l.*, shall remain undischarged, and which shall be issued, within that part of Great Britain called England, at any time after the 1st day of January, 1778, shall specify the names and places of abode of the persons respectively to whom, or to whose order, the same shall be made payable; and shall bear date before or at the time of drawing or issuing thereof, and not on any day subsequent thereto; and shall be made payable within the space of 21 days next after the day of the date thereof; and shall not be transferable or negotiable after the time thereby limited for payment thereof; and that every indorsement to be made thereon shall be made before the expiration of that time, and to bear date at or not before the time of making thereof; and shall specify the name and place of abode of the person or persons to whom, or to whose order, the money contained in every such note, bill, draft, or undertaking, is to be paid; and that the signing of every such note, bill, draft, or undertaking, and also of every such indorsement, shall be attested by one subscribing witness at the least; and which said notes, bills of exchange, or drafts, or undertakings in writing, may be made or drawn in words to the purport or effect as set out in the schedule hereunto annexed, Nos. I. and II.: and that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for

All negotiable promissory notes, &c. for 20*s.* and less than 5*l.* which shall be issued in England after Jan. 1, 1778, shall specify the names, &c. of the persons to whom payable.

The signing of every such note and indorsement to be attested by one witness.

the payment of 20s., or any sum of money above that sum and less than 5*l.*; or on which 20s., or above that sum and less than 5*l.*, shall remain undischarged, and which shall be issued within that part of Great Britain called England at any time after the said 1st day of January, 1778, in any other manner than as aforesaid; and also every indorsement on any such note, bill, draft, or undertaking, to be negotiated under this act other than as aforesaid shall and the same are hereby declared to be absolutely void; any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding.

Penalty on publishing or negotiating any such notes, &c. contrary to the method prescribed by this act.

2. That the publishing, uttering, or negotiating, within that part of Great Britain called England, of any promissory or other note, bill of exchange, draft, or undertaking in writing, being negotiable or transferable, for 20s., or above that sum and less than 5*l.*, or on which 20s., or above that sum and less than 5*l.*, shall remain undischarged, and issued or made in any other manner than notes, bills, drafts, or undertakings, hereby permitted to be published or negotiated as aforesaid; and also the negotiating of any such last-mentioned notes, bills, drafts, or undertakings, after the time appointed for payment thereof, or before that time in any other manner than as aforesaid, by any act, contrivance, or means whatsoever, from and after the said 1st day of January, 1778, shall be, and the same is hereby declared to be, prohibited or restrained, under the like penalties or forfeitures, and to be recovered and applied in like manner as by the said act is directed, with respect to the uttering or publishing or negotiating of notes, bills of exchange, drafts, or undertakings in writing, for any sum of money not less than the sum of 20s., or on which less than that sum should be due.

All negotiable promissory notes, &c. between 20s. and 5*l.* which shall be issued before Jan. 1, 1778, shall be payable on demand.

3. That, from and immediately after the passing of this act, all promissory or other notes, bills of exchange, drafts, or undertakings in writing, for the payment of any greater sum of money than 20s., and less than the sum of 5*l.*, or on which 20s. and less than the sum of 5*l.*, shall remain undischarged, and being negotiable or transferable, as shall be issued before the said 1st day of January, 1778, shall be, and the same are hereby declared and adjudged payable, within that part of Great Britain called England, on demand, any terms, restrictions, or conditions therein contained to the contrary thereof notwithstanding; and shall be recoverable in such manner, or by the like means, as is or are directed in or by the said act with respect to notes, bills of exchange, or drafts, or undertakings in writing therein mentioned to have issued previous to the said 24th day of June, 1775; and that all and every other the powers, provisos, limitations, restrictions, penalties, clauses, matters and things whatsoever in the said former act contained with respect thereto, and also with respect to all

such notes, bills of exchange, drafts, or undertakings in writing, issued after the said 24th day of June, 1775, shall be, and the same are hereby declared to be in force, within that part of Great Britain called England, as to all notes, bills of exchange, or drafts, or undertakings in writing, for 20s., or any greater sum and less than the sum of 5*l.*, or on which 20s., or above that sum and less than 5*l.*, shall remain undischarged, issued after the said 1st day of January, 1778, and previous thereto respectively, and in like manner as if the same respectively had been the object of the said act at the time of making thereof, save so far as the same or any of them are altered or varied by this present act.

4. That the said former, and also this present act, shall continue in force, not only for the residue of the term of five years in the said former act mentioned, and from thence to the end of the then next session of parliament, but also for the further term of five years, and from thence to the end of the then next session of parliament (a).

Continuance  
of this act  
and the  
former act (a).

## SCHEDULE.

### No. I.

[Place] [day] [month] [year]  
Twenty-one days after date, I promise to pay to A. B. of  
[place] or his order, the sum of for value received by

Witness, E. F.

C. D.

*And the indorsement, toties quoties.*

[Day] [month] [year]  
Pay the contents to G. H. of [place] or his order.  
Witness, J. K. A. B.

### No. II.

[Place] [day] [month] [year]  
Twenty-one days after date, pay to A. B. of [place]  
or his order, the sum of value received, as advised by  
To E. F. of [place] C. D.  
Witness, G. H.

*And the indorsement, toties quoties.*

[Day] [month] [year]  
Pay the contents to J. K. of [place] or his order.  
Witness, L. M. A. B.

(a) These acts were afterwards made perpetual by 27 Geo. 3, c. 16. The recited act of 15 Geo. 3, c. 51, was, however, repealed by 48 Geo. 3, c. 88, s. 1. But by 26 & 27 Vict. c. 105, the 17 Geo. 3, c. 30, was temporarily repealed, and the repeal is continued by 36 & 37 Vict. c. 75, to the 28th July, 1874. By 17 & 18 Vict. c. 83, s. 9, these acts are not to extend to cheques.

*Bank of England Restriction Act.*

39 &amp; 40 GEO. 3, c. 28, s. 15.

*An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year 1800 (a).* [28th March, 1800.]

No other bank shall be erected by parliament during the continuance of the said privilege, nor shall any number of bankers in partnership exceeding six be allowed.

Conditions of redemption.

15. And to prevent any doubts that may arise concerning the privilege or power given, by former acts of parliament, to the said governor and company, of exclusive banking, and also in regard to the erecting any other bank or banks by parliament, or restraining other persons from banking during the continuance of the said privilege, granted to the Governor and Company of the Bank of England as before recited, it is hereby further enacted and declared, that it is the true intent and meaning of this act, that no other bank shall be erected, established or allowed by parliament; and that it shall not be lawful for any body, politic or corporate, whatsoever, erected or to be erected, or for any other persons, united or to be united in covenants, or partnership, exceeding the number of six persons in that part of Great Britain called England, to borrow, owe, or take up any sum or sums of money on their bills or notes, payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the said privilege to the said governor and company; who are hereby declared to be and remain a corporation, with the privilege of exclusive banking, as before recited, subject to redemption on the terms and conditions before mentioned; that is to say, on one year's notice to be given after the 1st day of August, 1833, and repayment of the said sum of 3,200,000*l.*, and all arrears of the said 100,000*l.* per annum; and also upon repayment of the said sum of 8,486,800*l.*, and the interest or annuities payable thereon or in respect thereof, and all the principal and interest money that shall be owing on all such tallies, exchequer orders, exchequer bills, parliamentary funds, or other government securities, which the said governor and company, or their successors, shall have remaining in their hands, or be entitled to, at the time of such notice to be given as aforesaid, and not otherwise, anything in this act or any former act or acts of parliament to the contrary in anywise notwithstanding.

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(a) By 34 & 35 Vict. c. 116, the Statute Law Revision Act, 1871, the whole of this act, "except from the said Governor and Company of the Bank of England and their successors for ever," in sect. 13 to the end of the act, is repealed. The above section (15) is therefore still in force.

*Restraining Negotiation of Bills and Notes under a limited Sum.*

48 GEO. 3, c. 88.

*An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, in England (a).* [23rd June, 1808.]

2. And be it further enacted, that all promissory or other notes, bills of exchange or drafts, or undertakings in writing, being negotiable or transferable for the payment of any sum or sums of money, or any orders, notes or undertakings in writing, being negotiable or transferable for the delivery of any goods, specifying their value in money, less than the sum of 20s. in the whole, heretofore made or issued, or which shall hereafter be made or issued, shall from and after the first day of October, 1808, be and the same are hereby declared to be absolutely void and of no effect.

Promissory notes for less than 20s. void.

3. That if any person or persons shall after the 1st day of July, 1808, by any art, device, or means whatsoever, publish or utter any such notes, bills, drafts, or engagements as aforesaid, for a less sum than 20s., or on which less than the sum of 20s. shall be due, and which shall be in anywise negotiable or transferable, or shall negotiate or transfer the same, every such person shall forfeit and pay, for every such offence, any sum not exceeding 20*l.*, nor less than 5*l.*, at the discretion of the justice of the peace who shall hear and determine such offence.

Persons uttering such notes or bills for less than 20s., &c. shall forfeit not exceeding 20*l.* nor less than 5*l.*

4. That it shall be lawful for any justice or justices of the peace, acting for the county, riding, city or place within which any offence against this act shall be committed, to hear and determine the same in a summary way, at any time within twenty days after such offence shall have been committed; and such justice or justices, upon any information exhibited or complaint made upon oath in that behalf, shall summon the party accused, and also the witnesses on either side, and shall examine into the matter of fact, and upon due proof made thereof, either by the voluntary confession of the party or by the oath of one or more credible witness or witnesses, or otherwise (which oath such justice or justices is or are hereby authorized to administer) shall convict the offender, and adjudge the penalty for such offence.

Justices empowered to hear and determine offences.

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(a) By the Statute Law Revision Act, 1872 (No. 2) (35 & 36 Vict. c. 97), sects. 1 and 11 are repealed. By 26 & 27 Vict. c. 105, continued by 36 & 37 Vict. c. 75, the act is repealed until 28th July, 1874. By 17 & 18 Vict. c. 83, s. 9, the act is not to extend to drafts on bankers.

Penalty on witnesses not attending.

5. That if any person shall be summoned as a witness to give evidence before such justice or justices, either on the part of the prosecutor or the person accused, and shall neglect or refuse to appear at the time or place to be for that purpose appointed without a reasonable excuse for such his neglect or refusal, to be allowed by such justice or justices, then such person shall forfeit for every such offence the sum of 40s., to be levied and paid in such manner and by such means as are directed for recovery of other penalties under this act.

6. That the justice or justices, before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out, in the manner and form following; (that is to say,)

Form of conviction.

"Be it remembered, that on the                      day of                      in the year of our Lord                      A. B. having appeared before me [*or, us*] one [*or more*] of his Majesty's justices of the peace [*as the case may be*] for the county, riding, city or place [*as the case may be*] and due proof having been made upon oath by one or more credible witness or witnesses, or by confession of the party [*as the case may be*] is convicted of                      [*specifying the offence*]. Given under my hand and seal [*or, our hands and seals*] the day and year aforesaid."

Convictions to be returned to the quarter sessions.

Which conviction the said justice or justices shall cause to be returned to the then next general quarter sessions of the peace of the county, riding, city or place where such conviction was made, to be filed by the clerk of the peace, to remain and be kept among the records of such county, riding, city or place.

Clerks of the peace to give copies of convictions on payment of 1s.

7. Provided always, that it shall be lawful for any clerk of the peace for any county, riding, city or place, and he is hereby required, upon application made to him by any person or persons for that purpose, to cause a copy or copies of any conviction or convictions filed by him under the directions of this act, to be forthwith delivered to such person or persons upon payment of 1s. for every such copy.

How penalties shall be levied and applied.

8. That the pecuniary penalties and forfeitures hereby incurred and made payable upon any conviction against this act shall be forthwith paid by the person convicted, as follows; one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed: and in case such person shall refuse or neglect to pay the same, or to give sufficient security to the satisfaction of such justice or justices to prosecute any appeal against such conviction, such justice or justices shall by warrant under his or their hand and seal or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and which said warrant of distress the said justice or

justices shall cause to be made out in the manner and form following; (that is to say,)

“To the constable, headborough, or tythingman of . . . Form of the  
 “WHEREAS A. B. of . . . in the county of . . . is this day warrant of  
 convicted before me [or, us] one [or more] of his Majesty’s distress.  
 justices of the peace [*as the case may be*] for the county  
 of . . . [or, for the . . . riding of the county of York], or for  
 the town, liberty, or district of . . . [*as the case may be*] upon  
 the oath of . . . or . . . a credible witness or witnesses [or,  
 by confession of the party, *as the case may be*] for that the said  
 A. B. hath [*here set forth the offence*] contrary to the statute in  
 that case made and provided by reason whereof the said A. B.  
 hath forfeited the sum of . . . to be distributed as herein is  
 mentioned, which he hath refused to pay: these are therefore,  
 in his Majesty’s name, to command you to levy the said sum  
 of . . . by distress of the goods and chattels of him the said  
 A. B., and if within the space of five days next after such  
 distress by you taken, the said sum, together with the reason-  
 able charges of taking the same, shall not be paid, then that  
 you do sell the said goods and chattels so by you distrained,  
 and out of the money arising by such sale, that you do pay  
 one-half of the said sum of . . . to . . . of . . . who informed  
 me [or, us, *as the case shall be*] of the said offence, and the  
 other half of the said sum of . . . to the overseer of the poor  
 of the parish, township or place where the offence was com-  
 mitted, to be employed for the benefit of such poor, returning  
 the overplus (if any) upon demand, to the said A. B. the  
 reasonable charges of taking, keeping, and selling the said  
 distress being first deducted; and if sufficient distress cannot  
 be found of the goods and chattels of the said A. B. whereon  
 to levy the said sum of . . . that then you certify the same  
 to me [or, us, *as the case shall be*] together with this warrant.  
 Given under my hand and seal [or, our hands and seals] the  
 day of . . . in the year of our Lord . . .”

9. That it shall be lawful for such justice or justices to order such offender to be detained in safe custody until return may conveniently be had and made to such warrant of distress, unless the party so convicted shall give sufficient security, to the satisfaction of such justice or justices, for his appearance before the said justice or justices on such day as shall be appointed by the said justice or justices for the day of the return of the said warrant or distress (such day not exceeding five days from the taking of such security); which security the said justice or justices is and are hereby empowered to take by way of recognizance or otherwise.

Security may  
be taken for  
appearance.

10. That if upon such return no sufficient distress can be had, then and in such case the said justice or justices shall

Offenders  
may be com-  
mitted for

want of distress.

and may commit such offender to the common gaol or house of correction of the county, riding, division or place where the offence shall be committed, for the space of three calendar months, unless the money forfeited shall be sooner paid, or unless or until such offender thinking him or herself aggrieved by such conviction, shall give notice to the informer that he or she intends to appeal to the justices of the peace at the next general quarter sessions of the peace to be holden for the county, riding or place wherein the offence shall be committed, and shall enter into recognizance before some justice or justices, with two sufficient sureties conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions (which notice of appeal, being not less than eight days before the trial thereof, such person so aggrieved is hereby empowered to give); and the said justices at such sessions, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such quarter session shall be final, binding, and conclusive, to all intents and purposes.

Convictions not to be removed.

12. Provided always, that no proceedings to be had, touching the conviction or convictions of any offender or offenders against this act, shall be quashed for want of form, or be removed by writ of certiorari, or any other writ or process whatsoever, into any of his Majesty's Courts of Record at Westminster.

General issue may be pleaded.

13. That if any action or suit shall be commenced against any person or persons for any thing done or acted in pursuance of this act, then and in every such case such action or suit shall be commenced or prosecuted within three calendar months after the fact committed, and not afterwards; and the same and every such action or suit shall be brought within the county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if the same shall appear to have been so done, or if any such action or suit shall be brought after the time limited for bringing the same, or be brought or laid in any other place than as aforementioned, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given

against the plaintiff or plaintiffs, the defendant or defendants shall and may recover *treble* costs (ordinary costs by 5 & 6 Vict. c. 97, s. 2).

*Issue of Bank Notes on unstamped Paper and Bankers' Licences.*

55 GEO. 3, c. 184.

*An Act for repealing the Stamp Duties on Deeds, Law Proceedings, and other written or printed Instruments, &c. (a).*  
[11th July, 1815.]

2. That there shall be raised, levied and paid unto and for the use of his Majesty, his heirs and successors, in and throughout the whole of Great Britain, for and in respect of the instruments, matters or things mentioned in the schedule annexed, . . . and that the duties shall commence and take place from and after 31st August, 1815.

Duties specified in schedule to be levied.

23. That from and after the 31st day of August, 1815, it shall be lawful for the Governor and Company of the Bank of Scotland and the Royal Bank of Scotland, and the British Linen Company in Scotland respectively, to issue their promissory notes for the sums of one pound, one guinea, two pounds, and two guineas, payable to the bearer on demand, on unstamped paper, in the same manner as they were authorized to do by the aforesaid act of the 48th of his Majesty's reign; they the said Governor and Company of the Bank of Scotland, and the Royal Bank of Scotland, and British Linen Company, respectively giving such security, and keeping and producing true accounts of all the notes so to be issued by them respectively, and accounting for and paying the several duties payable in respect of such notes, in such and the same manner, in all respects, as is and are prescribed and required by the said last-mentioned act, with regard to the notes thereby allowed to be issued by them on unstamped paper, and also to re-issue such promissory notes respectively, from time to time after the payment thereof, as often as they shall think fit.

The Bank and Royal Bank of Scotland, and British Linen Company, may issue small notes on unstamped paper, accounting for the duties.

24. That from and after the 10th day of October, 1815, it shall not be lawful for any banker or bankers, or other person or persons (except the Governor and Company of the Bank of England), to issue any promissory notes for money payable to the bearer on demand, hereby charged with a duty and

Re-issuable notes not to be issued by bankers or others, without a licence.

(a) The Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 99), excepts the sections and part of the schedule here set out from the repeal, and the Statute Law Revision Act, 1873 (36 & 37 Vict. c. 91), repeals sects. 25 and 26; and by Statute Law Revision Act, 1874, sect. 23 is repealed.

Regulation  
respecting  
licences.

allowed to be re-issued as aforesaid, without taking out a licence yearly for that purpose; which licence shall be granted by two or more of the said commissioners of stamps for the time being, or by some person authorized in that behalf by the said commissioners, or the major part of them, on payment of the duty charged thereon, in the schedule hereunto annexed; and a separate and distinct licence shall be taken out for or in respect of every town or place where any such promissory notes shall be issued by, or by any agent or agents for or on account of, any banker or bankers or other person or persons; and every such licence shall specify the proper name or names and place or places of abode of the person or persons, or the proper name and description of any body corporate to whom the same shall be granted, and also the name of the town or place where, and the name of the bank, as well as the partnership, or other name, style or firm under which such notes are to be issued; and where any such licence shall be granted to persons in partnership, the same shall specify and set forth the names and places of abode of all the persons concerned in the partnership, whether all their names shall appear on the promissory notes to be issued by them or not; and in default thereof such licence shall be absolutely void; and every such licence which shall be granted between the 10th day of October and the 11th day of November in any year, shall be dated on the 11th day of October; and every such licence which shall be granted at any other time, shall be dated on the day on which the same shall be granted; and every such licence respectively shall have effect and continue in force from the day of the date thereof until the 10th day of October following, both inclusive.

Persons  
applying for  
licences to  
deliver speci-  
mens of their  
notes.

27. That the banker or bankers, or other person or persons, applying for any such licence as aforesaid, shall produce and leave with the proper officer a specimen of the promissory notes proposed to be issued by him or them, to the intent that the licence may be framed accordingly; and if any banker or bankers, or other person or persons (except the said Governor and Company of the Bank of England), shall issue, or cause to be issued by any agent, any promissory note for money payable to the bearer on demand, hereby charged with a duty, and allowed to be re-issued as aforesaid, without being licensed so to do in the manner aforesaid, or at any other town or place, or under any other name, style or firm than shall be specified in his or their licence, the banker or bankers, or other person or persons, so offending, shall, for every such offence, forfeit the sum of 100*l*.

Licences to  
continue in  
force not-

28. That where any such licence as aforesaid shall be granted to any person in partnership, the same shall continue

in force for the issuing of promissory notes duly stamped, under the name, style, or firm therein specified, until the 10th day of October inclusive following the date thereof, notwithstanding any alteration in the partnership.

SCHEDULE annexed.

Licence to be taken out yearly by any banker or bankers, or other person or persons who shall issue any promissory notes for money payable to the bearer on demand and allowed to be re-issued, 30*l*.

*Issuing Promissory Notes under 5*l*.*

7 GEO. 4, c. 6.

*An Act to limit, and after a certain Period to prohibit, the issuing of Promissory Notes, under a limited Sum, in England* (a). [22nd March, 1826.]

3. That if any body politic or corporate, or any person or persons, shall from and after the passing of this act, and before the 5th day of April, 1829, make, sign, issue, or re-issue in England any promissory note payable on demand to the bearer thereof, for any sum of money less than the sum of 5*l*., except such promissory note or form of note as aforesaid, of any banker or bankers, or banking companies, or person or persons duly licensed in that behalf, which shall have been duly stamped before the 5th day of February, 1826; and except such promissory note of the Governor and Company of the Bank of England as shall have been or shall be made out and bear date before the said 10th day of October, 1826; or if any body politic or corporate, or person or persons, shall, after the said 5th day of April, 1829, make, sign, issue, or re-issue in England any promissory note in writing, payable on demand to the bearer thereof, for any sum of money less than 5*l*., then and in either of such cases every such body politic or corporate, or person or persons, so making, signing, issuing, or re-issuing any such promissory note as aforesaid, except as aforesaid, shall, for every such note so made, signed, issued, or re-issued, forfeit the sum of 20*l*.

Penalty 20*l*. on issuing, &c. before 5th April, 1829, any notes under 5*l*. payable on demand, except such as are allowed by this act;

or on issuing any note whatever on demand for less than 5*l*. after 5th April, 1829.

4. That if any body politic or corporate, or person or per- Penalty 20*l*. on uttering,

(a) By the Statute Law Revision Act, 1873 (36 & 37 Vict. c. 91), sects. 1 and 2 are repealed.

&c. any notes payable to order or bills of exchange under 5*l*. (not payable on demand) otherwise than according to the directions of 17 Geo. 3, c. 30.

Penalties may be recovered under the Stamp Acts.

Bank of England shall deliver to Treasury, monthly accounts of their notes under 5*l*. in circulation during each week of every such month.

Such accounts to be published in the Gazette, and laid before parliament, if sitting.

sons, in England, shall, from and after the passing of this act, publish, utter, or negotiate any promissory or other note (not being a note payable to bearer on demand, as is hereinbefore mentioned), or any bill of exchange, draft, or undertaking in writing, being negotiable or transferable for the payment of 20*s*., or above that sum and less than 5*l*., or on which 20*s*., or above that sum and less than 5*l*., shall remain undischarged, made, drawn, or indorsed in any other manner than as is directed by the said act passed in the 17th year of the reign of his late Majesty; every such body politic or corporate, or person or persons, so publishing, uttering, or negotiating any such promissory or other note (not being such note payable to bearer on demand as aforesaid), bill of exchange, draft, or undertaking in writing as aforesaid, shall forfeit and pay the sum of 20*l*.

5. That the penalties which shall or may be incurred under any of the provisions of this act, and which are in lieu of the penalties imposed by the said act of the 17th year of his late Majesty, may be sued for, recovered, levied, mitigated, and applied in such and the same manner as any other penalties imposed by any of the laws now in force relating to the duties under the management of the commissioners of stamps.

6. That the Governor and Company of the Bank of England shall and they are hereby required, from time to time, from and after the passing of this act, on the 15th day of each month in each and every year preceding the 5th day of April, 1829 (or if such days, or any of them, shall happen on a Sunday, then on the 16th day of any such month respectively) to cause a true and perfect account in writing to be taken and attested by the proper officer, of the total number of notes of the said governor and company, under the value of 5*l*., which shall have been issued during each and every week of the preceding month, ending on the Saturday next preceding such days respectively, from Monday until Saturday in each and every week, both inclusive, distinguishing the respective denominations and values of such notes, and also stating the total amount actually in circulation at the close of business on every such Saturday, and shall cause such account to be transmitted and delivered within three days after such 15th day of each and every such month as aforesaid, to one of the secretaries of the commissioners of his Majesty's Treasury, who shall and they are hereby required to cause the same to be published forthwith in the London Gazette, and shall also, and are hereby required to cause a copy of such account to be laid before both houses of parliament at each and every of the periods above mentioned, if parliament shall at such times be sitting, or otherwise within ten days after the next meeting of parliament.

7. That from and after the passing of this act the commissioners of stamps shall not be empowered to provide any stamp or stamps for expressing or denoting the duty or duties payable in England upon any promissory note for the payment to the bearer on demand of any sum of money less than the sum of 5*l*.; nor shall it be lawful for the said commissioners, or any of their officers, to stamp any promissory note, or the form of any promissory note, for the payment to the bearer on demand of any sum of money less than 5*l*.

Commissioners of stamps shall not stamp notes under 5*l*. payable on demand.

8. And whereas the said commissioners of stamps did, in pursuance of directions in that behalf from the commissioners of his Majesty's Treasury of the United Kingdom of Great Britain and Ireland, on the 3rd day of February last past, order their officers not to stamp any more promissory notes for circulation in England of less value than 5*l*.; and it is expedient that the said commissioners of the Treasury and the commissioners of stamps, and all persons acting under their authority in that behalf, should be indemnified for having so respectively acted without the authority of parliament; be it therefore enacted, that the said commissioners of his Majesty's Treasury, and the said commissioners of stamps respectively, and all persons who shall by their order, in pursuance of the said directions, have refused to stamp any such notes, or to do any matter or thing relating thereto, shall be and are and is hereby saved harmless, indemnified, and discharged in respect thereof, as well against the king's Majesty, his heirs and successors, as against every other person.

Indemnity.

9. Provided always, that nothing herein contained shall extend to any draft or order drawn by any person or persons on his, her or their banker or bankers, or on any person or persons acting as such banker or bankers, for the payment of money held by such banker or bankers, person or persons, to the use of the person or persons by whom such draft or order shall be drawn.

Act not to extend to orders drawn by any person on his banker.

10. That every promissory note payable to bearer on demand, for any sum of money under the sum of 20*l*., which shall be made and issued after the 5th day of April, 1829, shall be made payable at the bank or place where the same shall be so made and issued as aforesaid: provided always, that nothing herein contained shall extend to prevent any such promissory note from being made payable at several places, if one of such places shall be the bank or place where the same shall be so issued as aforesaid.

Notes under 20*l*. to be payable at the bank where issued.

*The Banking Copartnerships Regulation Act, 1826.*

7 GEO. 4, c. 46.

*An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of His late Majesty King George the Third, intituled "An Act for establishing an Agreement with the Governor and Company of the Bank of England, for advancing the Sum of Three Millions towards the Supply for the Service of the Year 1800," as relates to the same. [26th May, 1826.]*

39 & 40  
Geo. 3, c. 28.

WHEREAS an act was passed in the 39th and 40th years of the reign of his late Majesty King George the Third, intituled "An Act for establishing an agreement with the Governor and Company of the Bank of England, for advancing the sum of three millions towards the supply for the service of the year 1800:" and whereas it was, to prevent doubts as to the privilege of the said governor and company, enacted and declared in the said recited act, that no other bank should be erected, established or allowed by parliament; and that it should not be lawful for any body politic or corporate whatsoever, erected or to be erected, or for any other persons united or to be united in covenants or partnership, exceeding the number of six persons, in that part of Great Britain called England, to borrow, owe or take up any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof during the continuance of the said privilege to the said governor and company, who were thereby declared to be and remain a corporation, with the privilege of exclusive banking, as before recited; but subject nevertheless to redemption on the terms and conditions in the said act specified: and whereas the Governor and Company of the Bank of England have consented to relinquish so much of their exclusive privilege as prohibits any body politic or corporate, or any number of persons exceeding six, in England, acting in copartnership, from borrowing, owing or taking up any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof; provided that such body politic or corporate, or persons united in covenants or partnerships, exceeding the number of six persons in each copartnership, shall have the whole of their banking establishments and carry on their business as bankers at any place or places in England exceeding the distance of 65 miles from London, and that all the individuals composing such corporations or copartnerships, carrying on such business, shall be liable to and responsible for the due payment of all

bills and notes issued by such corporations or copartnerships respectively: be it therefore enacted, &c., that from and after the passing of this act it shall and may be lawful for any bodies politic or corporate erected for the purposes of banking, or for any number of persons united in covenants or copartnership, although such persons so united or carrying on business together shall consist of more than six in number, to carry on the trade or business of bankers in England, in like manner as copartnerships of bankers consisting of not more than six persons in number may lawfully do; and for such bodies politic or corporate, or such persons so united as aforesaid, to make and issue their bills or notes at any place or places in England exceeding the distance of 65 miles from London, payable on demand, or otherwise at some place or places specified upon such bills or notes, exceeding the distance of 65 miles from London, and not elsewhere, and to borrow, owe or take up any sum or sums of money on their bills or notes so made and issued at any such place or places as aforesaid: provided always, that such corporations or persons carrying on such trade or business of bankers in copartnership shall not have any house of business or establishment as bankers in London, or at any place or places not exceeding the distance of 65 miles from London; and that every member of any such corporation or copartnership shall be liable to and responsible for the due payment of all bills and notes which shall be issued, and for all sums of money which shall be borrowed, owed or taken up by the corporation or copartnership of which such person shall be a member, such person being a member at the period of the date of the bills or notes, or becoming or being a member before or at the time of the bills or notes being payable, or being such member at the time of the borrowing, owing or taking up of any sum or sums of money upon any bills or notes by the corporation or copartnership, or while any sum of money on any bills or notes is owing or unpaid, or at the time the same became due from the corporation or copartnership; any agreement, covenant or contract to the contrary notwithstanding.

2. Provided always, that nothing in this act contained shall extend or be construed to extend to enable or authorize any such corporation, or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers as aforesaid, either by any member of or person belonging to any such corporation or copartnership, or by any agent or agents, or any other person or persons on behalf of any such corporation or copartnership, to issue or re-issue in London, or at any place or places not exceeding the distance of 65 miles from London, any bill or note of such corporation or copartnership, which shall be payable to bearer on demand, or any bank post bill; nor to draw upon any partner or agent, or

Copartner-  
ships of more  
than six in  
number may  
carry on  
business as  
bankers in  
England, 65  
miles from  
London, pro-  
vided they  
have no esta-  
blishment as  
bankers in  
London, and  
that every  
member shall  
be liable for  
the payment  
of all bills,  
&c.

This act not  
to authorize  
copartner-  
ships to issue,  
within the  
limits men-  
tioned, any  
bills payable  
on demand;  
nor to draw  
bills upon  
any partner,  
&c. so resi-  
dent, for less  
than 50l.;

other person or persons who may be resident in London, or at any place or places not exceeding the distance of 65 miles from London, any bill of exchange which shall be payable on demand, or which shall be for a less amount than 50*l.*: provided also, that it shall be lawful, notwithstanding anything herein or in the said recited act contained, for any such corporation or copartnership to draw any bill of exchange for any sum of money amounting to the sum of 50*l.* or upwards, payable, either in London or elsewhere, at any period after date or after sight.

nor to borrow money, or take up or issue bills of exchange, contrary to the provisions of the recited act, except as herein provided.

3. Provided also, that nothing in this act contained shall extend or be construed to extend to enable or authorize any such corporation, or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers in England as aforesaid, or any member, agent or agents of any such corporation or copartnership, to borrow, owe or take up in London, or at any place or places not exceeding the distance of 65 miles from London, any sum or sums of money on any bill or promissory note of any such corporation or copartnership payable on demand, or at any less time than six months from the borrowing thereof, nor to make or issue any bill or bills of exchange or promissory note or notes of such corporation or copartnership contrary to the provisions of the said recited act of the 39th and 40th years of King George the Third, save as provided by this act in that behalf: provided also, that nothing herein contained shall extend, or be construed to extend, to prevent any such corporation or copartnership, by any agent or person authorized by them, from discounting in London or elsewhere any bill or bills of exchange not drawn by or upon such corporation or copartnership, or by or upon any person on their behalf.

Such copartnerships shall, before issuing any notes, &c. deliver at the stamp office in London an

4. That before any such corporation, or copartnership exceeding the number of six persons, in England, shall begin to issue any bills or notes, or borrow, owe or take up any money on their bills or notes, an account or return shall be made out, according to the form contained in the Schedule marked (A.) to this act annexed(a), wherein shall be set forth

(a) SCHEDULE referred to by this Act.

(a) SCHEDULE (A.)

RETURN or account to be entered at the Stamp Office in London, in pursuance of an act passed in the seventh year of the reign of King George the Fourth, intituled [*here insert the title of this act*], viz.:

Firm or name of the banking corporation or copartnership, viz. [*set forth the firm or name.*]

Names and places of abode of all the partners concerned or engaged in such corporation or copartnership, viz. [*set forth all the names and places of abode.*]

Names and places of the bank or banks established by such corporation or copartnership, viz. [*set forth all the names and places.*]

the true names, title or firm of such intended or existing corporation or copartnership, and also the names and places of abode of all the members of such corporation, or of all the partners concerned or engaged in such copartnership, as the same respectively shall appear on the books of such corporation or copartnership, and the name or firm of every bank or banks established or to be established by such corporation or copartnership, and also the names and places of abode of two or more persons being members of such corporation or copartnership, and being resident in England, who shall have been appointed public officers of such corporation or copartnership, together with the title of office or other description of every such public officer respectively, in the name of any one of whom such corporation shall sue and be sued as hereinafter provided, and also the name of every town and place where any of the bills or notes of such corporation or copartnership shall be issued by any such corporation, or by their agent or agents; and every such amount or return shall be delivered to the commissioners of stamps, at the stamp office in London, who shall cause the same to be filed and kept in the said stamp office, and an entry and registry thereof to be made in a book or books to be there kept for that purpose by some person or persons to be appointed by the said commissioners in that behalf, and which book or books any person or persons shall from time to time have liberty to search and inspect on payment of the sum of 1s. for every search.

account containing the name of the firm, &c.

5. That such account or return shall be made out by the secretary or other person, being one of the public officers appointed as aforesaid, and shall be verified by the oath of

Account to be verified by secretary.

Names and descriptions of the public officers of the said banking corporation or copartnership, viz. [*set forth all the names and descriptions.*]

Names of the several towns and places where the bills or notes of the said banking corporation or copartnership are to be issued by the said corporation or copartnership, or their agent or agents, viz. [*set forth the names of all the towns and places.*]

A. B. of , secretary [*or other officer, describing the office*] of the above corporation or copartnership, maketh oath and saith, that the above doth contain the name, style and firm of the above corporation or copartnership, and the names and places of the abode of the several members thereof, and of the banks established by the said corporation or copartnership, and the names, titles and descriptions of the public officers of the said corporation or copartnership, and the names of the towns and places where the notes of the said corporation or copartnership are to be issued, as the same respectively appear in the books of the said corporation or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me, the  
county of .

day of , at , in the

C. D., justice of the peace in and  
for the said county.

such secretary or other public officer, taken before any justice of the peace, and which oath any justice of the peace is hereby authorized and empowered to administer; and that such account or return shall, between the 28th day of February and the 25th day of March in every year, after such corporation or copartnership shall be formed, be in like manner delivered by such secretary or other public officer as aforesaid to the commissioners of stamps, to be filed and kept in the manner and for the purposes as hereinbefore mentioned.

Certified  
copies of  
returns to be  
evidence of  
the appoint-  
ment of the  
public officers,  
&c.

6. That a copy of any such account or return so filed or kept and registered at the stamp office, as by this act is directed, and which copy shall be certified to be a true copy under the hand or hands of one or more of the commissioners of stamps for the time being, upon proof made that such certificate has been signed with the handwriting of the person or persons making the same, and whom it shall not be necessary to prove to be a commissioner or commissioners, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the public officers named in such account or return, and also of the fact that all persons named therein as members of such corporation or copartnership were members thereof at the date of such account or return.

Commission-  
ers of stamps  
to give cer-  
tified copies  
of affidavits,  
on payment  
of 10s.

7. That the said commissioners of stamps for the time being shall, and they are hereby required, upon application made to them by any person or persons requiring a copy certified according to this act, of any such account or return as aforesaid, in order that the same may be produced in evidence, or for any other purpose, to deliver to the person or persons so applying for the same such certified copy, he, she, or they paying for the same the sum of 10s. and no more.

Account of  
new officers  
or members  
in the course  
of any year to  
be made.

8. Provided also, that the secretary or other officer of every such corporation or copartnership shall, and he is hereby required, from time to time, as often as occasion shall render it necessary, make out upon oath, in manner hereinbefore directed, and cause to be delivered to the commissioners of stamps as aforesaid, a further account or return according to the form contained in the schedule marked (B.) to this act annexed (a), of the name or names of any person or persons

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(a) SCHEDULE referred to by this Act.

(a) SCHEDULE (B.)

RETURN or account to be entered at the Stamp Office in London, on behalf of [*name the corporation or copartnership*] in pursuance of an act passed in the seventh year of the reign of King George the Fourth, intituled [*insert the title of this act*], viz.:

Names of any and every new or additional public officer of the said corporation or copartnership; viz.

A. B. in the room of C. D. deceased or removed [*as the case may be*]  
[*set forth every name.*]

who shall have been nominated or appointed a new or additional public officer or public officers of such corporation or copartnership, and also of the name or names of any person or persons who shall have ceased to be members of such corporation or copartnership, and also of the name or names of any person or persons who shall have become a member or members of such corporation or copartnership, either in addition to or in the place or stead of any former member or members thereof, and of the name or names of any new or additional town or towns, place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable; and such further accounts or returns shall from time to time be filed and kept, and entered and registered at the stamp office in London, in like manner as is hereinbefore required with respect to the original or annual account or return hereinbefore directed to be made.

9. That all actions and suits, and also all petitions to found any commission of bankruptcy against any person or persons, who may be at any time indebted to any such co-partnership carrying on business under the provisions of this act, and all proceedings at law or in equity under any commission of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf of any such copartnership against any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, shall and lawfully may, from and after the passing of this act, be

Copartner-  
ships shall sue  
and be sued  
in the name  
of their public  
officers.

Names of any and every person who may have ceased to be a member of such corporation or copartnership, viz. [*set forth every name.*]

Names of any and every person who may have become a new member of such corporation or copartnership [*set forth every name*].

Names of any additional towns or places where bills or notes are to be issued, and where the same are to be made payable.

A. B., of \_\_\_\_\_, secretary [*or other officer*] of the above-named corporation or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of any and every person who hath become or been appointed a public officer of the above corporation or copartnership, and also the name and place of abode of any and every person who hath ceased to be a member of the said corporation or copartnership, and of any and every person who hath become a member of the said copartnership since the registry of the said corporation or copartnership on the \_\_\_\_\_ day of \_\_\_\_\_ last, as the same respectively appear on the books of the said corporation or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me, the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the county of \_\_\_\_\_.

C. D., justice of the peace in and for the said county.

commenced or instituted and prosecuted in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal plaintiff or petitioner for and on behalf of such copartnership; and that all actions or suits, and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership, shall and lawfully may be commenced, instituted and prosecuted against any one or more of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal defendant for and on behalf of such copartnership; and that all indictments, informations and prosecutions by or on behalf of such copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to such copartnership, or for any fraud, forgery, crime, or offence committed against or with intent to injure or defraud such copartnership, shall and lawfully may be had, preferred and carried on in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and that in all indictments and informations to be had or preferred by or on behalf of such copartnership against any person or persons whomsoever, notwithstanding such person or persons may happen to be a member or members of such copartnership, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such copartnership, to be the money, goods, effects, bills, notes, securities, or other property of any one of the public officers nominated as aforesaid for the time being of such copartnership; and that any forgery, fraud, crime, or other offence committed against or with intent to injure or defraud any such copartnership, shall and lawfully may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against or with intent to injure or defraud any one of the public officers nominated as aforesaid for the time being of such copartnership; and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime or offence; and that in all other allegations, indictments, informations, or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing such copartnership, it shall and may be lawful and sufficient to state the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and the death, resignation, removal, or any act of such public officer, shall not abate or prejudice any such action, suit, indictment, information, prosecution or other proceeding commenced against or by or

on behalf of such copartnership, but the same may be continued, prosecuted and carried on in the name of any other of the public officers of such copartnership for the time being.

10. That no person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such corporation or copartnership, shall bring more than one action or suit, in case the merits shall have been tried in such action or suit, in respect of such demand; and the proceedings in any action or suit, by or against any one of the public officers nominated as aforesaid for the time being of any such copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same demand, by or against any other of the public officers of such copartnership.

Not more than one action for the recovery of one demand.

11. That all and every decree or decrees, order or orders, made or pronounced in any suit or proceeding in any court of equity against any public officer of any such copartnership carrying on business under the provisions of this act, shall have the like effect and operation upon and against the property and funds of such copartnership, and upon and against the persons and property of every or any member or members thereof, as if every or any such members of such copartnership were parties members before the court to and in any such suit or proceeding; and that it shall and may be lawful for any court in which such order or decree shall have been made, to cause such order and decree to be enforced against every or any member of such copartnership, in like manner as if every member of such copartnership were parties before such court to and in such suit or proceeding, and although all such members are not before the court.

Decrees of a court of equity against the public officer to take effect against the copartnership.

12. That all and every judgment and judgments, decree or decrees, which shall at any time after the passing of this act be had or recovered or entered up as aforesaid, in any action, suit, or proceedings in law or equity against any public officer of any such copartnership, shall have the like effect and operation upon and against the property of such copartnership, and upon and against the property of every such member thereof as aforesaid, as if such judgment or judgments had been recovered or obtained against such copartnership; and that the bankruptcy, insolvency, or stopping payment of any such public officer for the time being of such copartnership, in his individual character or capacity, shall not be nor be construed to be the bankruptcy, insolvency, or stopping payment of such copartnership; and that such copartnership and every member thereof, and the capital stock and effects of such copartnership, and the effects of every member of such copartnership, shall in all cases, not-

Judgments against such public officer shall operate against the copartnership.

withstanding the bankruptcy, insolvency, or stopping payment of any such public officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such copartnership, or of any member or members thereof, as if no such bankruptcy, insolvency, or stopping payment of such public officer of such copartnership had happened or taken place.

Execution upon judgment may be issued against any member of the copartnership.

13. That execution upon any judgment in any action obtained against any public officer for the time being of any such corporation or copartnership carrying on the business of banking under the provisions of this act, whether as plaintiff or defendant, may be issued against any member or members for the time being of such corporation or copartnership; and that in case any such execution against any member or members for the time being of any such corporation or copartnership shall be ineffectual for obtaining payment and satisfaction of the amount of such judgment, it shall be lawful for the party or parties so having obtained judgment against such public officer for the time being, to issue execution against any person or persons who was or were a member or members of such corporation or copartnership at the time when the contract or contracts or engagement or engagements in which such judgment may have been obtained was or were entered into, or became a member at any time before such contracts or engagements were executed, or was a member at the time of the judgment obtained: provided always, that no such execution as last mentioned shall be issued without leave first granted, on motion in open court, by the court in which such judgment shall have been obtained, and when motion shall be made on notice to the person or persons sought to be charged, nor after the expiration of three years next after any such person or persons shall have ceased to be a member or members of such corporation or copartnership.

Officer, &c. in such cases indemnified.

14. Provided always, that every such public officer in whose name any such suit or action shall have been commenced, prosecuted, or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs, and charges, without deduction, which any such officer or person may have incurred by reason of such execution, out of the funds of such copartnership, or in failure thereof, by contribution from the other members of such copartnership, as in the ordinary cases of copartnership.

Governor and Company of the Bank of England may empower

15. And to prevent any doubts that might arise whether the said governor and company, under and by virtue of their charter, and the several acts of parliament which have been made and passed in relation to the affairs of the said governor

and company, can lawfully carry on the trade or business of banking, otherwise than under the immediate order, management and direction of the court of directors of the said governor and company; be it therefore enacted, that it shall and may be lawful for the said governor and company to authorize and empower any committee or committees, agent or agents, to carry on the trade and business of banking, for and on behalf of the said governor and company, at any place or places in that part of the united kingdom called England, and for that purpose to invest such committee or committees, agent or agents, with such powers of management and superintendence, and such authority to appoint cashiers and other officers and servants as may be necessary or convenient for carrying on such trade and business as aforesaid; and for the same purpose to issue to such committee or committees, agent or agents, cashier or cashiers, or other officer or officers, servant or servants, cash, bills of exchange, bank post bills, bank notes, promissory notes, and other securities for payment of money: provided always, that all such acts of the said governor and company shall be done and exercised in such manner as may be appointed by any bye-laws, constitutions, orders, rules, and directions, from time to time hereafter to be made by the general court of the said governor and company in that behalf, such bye-laws not being repugnant to the laws of that part of the united kingdom called England: and in all cases where such bye-laws, constitutions, orders, rules, or directions of the said general court shall be wanting, in such manner as the governor, deputy-governor, and directors, or the major part of them assembled, whereof the said governor or deputy-governor is always to be one, shall or may direct, such directions not being repugnant to the laws of that part of the united kingdom called England; anything in the said charter or acts of parliament, or other law, usage, matter, or thing to the contrary thereof notwithstanding: provided always, that in any place where the trade and business of banking shall be carried on for and on behalf of the said governor and company of the Bank of England, any promissory note issued on their account in such place shall be made payable in coin in such place as well as in London.

16. That if any corporation or copartnership carrying on the trade or business of bankers under the authority of this act shall be desirous of issuing and re-issuing notes in the nature of bank notes, payable to the bearer on demand, without the same being stamped as by law is required, it shall be lawful for them so to do on giving security by bond to his Majesty, his heirs and successors, in which bond two of the directors, members, or partners of such corporation or copartnership, shall be the obligors, together with the cashier or cashiers, or

agents to carry on banking business at any place in England.

Copartnerships may issue unstamped notes, on giving bond.

accountant or accountants employed by such corporation or copartnership, as the said commissioners of stamps shall require ; and such bonds shall be taken in such reasonable sums as the duties may amount unto during the period of one year, with condition to deliver to the said commissioners of stamps, within 14 days after the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October, in every year, whilst the present stamp duties shall remain in force, a just and true account, verified upon the oaths or affirmations of two directors, members, or partners of such corporation or copartnership, and of the said cashier or cashiers, accountant or accountants, or such of them as the said commissioners of stamps shall require, such oaths or affirmations to be taken before any justice of the peace, and which oaths and affirmations any justice of the peace is hereby authorized and empowered to administer, of the amount or value of all their promissory notes in circulation on some given day in every week, for the space of one quarter of a year prior to the quarter day immediately preceding the delivery of such account, together with the average amount or value thereof according to such account ; and also to pay or cause to be paid into the hands of the receivers general of stamp duties in Great Britain, as a composition for the duties which would otherwise have been payable for such promissory notes issued within the space of one year, the sum of 7s. for every 100*l.*, and also for the fractional part of 100*l.* of the said average amount or value of such notes in circulation, according to the true intent and meaning of this act ; and on due performance thereof such bond shall be void ; and it shall be lawful for the said commissioners to fix the time or times of making such payment, and to specify the same in the condition to every such bond ; and every such bond may be required to be renewed from time to time, at the discretion of the said commissioners or the major part of them, and as often as the same shall be forfeited, or the party or parties to the same, or any of them, shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

No corporation compelled to take out more than four licences.

17. Provided always, that no such corporation or copartnership shall be obliged to take out more than four licences for the issuing of any promissory notes for money payable to the bearer on demand, allowed by law to be re-issued in all for any number of towns or places in England ; and in case any such corporation or copartnership shall issue such promissory notes as aforesaid, by themselves or their agents, at more than four different towns or places in England, then after taking out three distinct licences for three of such towns or places, such corporation or copartnership shall be entitled to have all the rest of such towns or places included in a fourth licence.

18. That if any such corporation or copartnership exceeding the number of six persons in England, shall begin to issue any bills or notes, or to borrow, owe or take up any money on their bills or notes, without having caused such account or return as aforesaid to be made out and deliver in the manner and form directed by this act, or shall neglect or omit to cause such account or return to be renewed yearly and every year between the days or times hereinbefore appointed for that purpose, such corporation or copartnership so offending shall, for each and every week they shall so neglect to make such account and return, forfeit 500*l.*; and if any secretary or other officer of such corporation or copartnership shall make out or sign such false account or return, or any account or return which shall not truly set forth all the several particulars by this act required to be contained or inserted in such account or return, the corporation or copartnership to which such secretary or other officer so offending shall belong shall for every such offence forfeit the sum of 500*l.*, and the said secretary or other officer so offending shall also for every such offence forfeit the sum of 100*l.*; and if any such secretary or other officer making out or signing any such account or return as aforesaid, shall knowingly and wilfully make a false oath of or concerning any of the matters to be therein specified and set forth, every such secretary or other officer so offending and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

Penalty on copartnership neglecting to send returns, 500*l.*

Penalties for making false returns.

False oath perjury.

19. That if any such corporation or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers as aforesaid, shall, either by any member of or person belonging to any such corporation or copartnership, or by any agent or agents, or any other person or persons on behalf of any such corporation or copartnership, issue or re-issue in London, or at any place or places not exceeding the distance of 65 miles from London, any bill or note of such corporation or copartnership which shall be payable on demand; or shall draw upon any partner or agent or other person or persons who may be resident in London, or at any place or places not exceeding the distance of 65 miles from London, any bill of exchange which shall be payable on demand, or which shall be for a less amount than fifty pounds; or if any such corporation or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers in England as aforesaid, or any member, agent or agents of any such corporation or copartnership, shall borrow, owe, or take up in London, or at any place or places not exceeding the distance of 65 miles from London, any sum or

Penalty on copartnership for issuing bills payable on demand;

or drawing bills of exchange payable on demand, or for less than 50*l.*; or borrowing money on bills, except as herein provided.

sums of money on any bill or promissory note of any such corporation or copartnership payable on demand, or at any less time than six months from the borrowing thereof, or shall make or issue any bill or bills of exchange or promissory note or notes of such corporation or copartnership contrary to the provisions of the said recited act of the 39th and 40th years of King George the Third, save as provided by this act, such corporation or copartnership so offending or on whose account or behalf any such offence as aforesaid shall be committed, shall for every such offence forfeit the sum of 50*l*.

Not to affect the rights of Bank of England, except as herein specially altered.

20. Provided also, that nothing in this act contained shall extend or be construed to extend to prejudice, alter, or affect any of the rights, powers, or privileges of the said Governor and Company of the Bank of England; except as the said exclusive privilege of the said governor and company is by this act specially altered and varied.

Penalties, how recovered.

21. *That all pecuniary penalties and forfeitures imposed by this act shall and may be sued for and recovered in his Majesty's Court of Exchequer at Westminster, in the same manner as penalties incurred under any act or acts relating to stamp duties may be sued for and recovered in such court.* (Repealed by 36 & 37 Vict. c. 91.)

*Bank Notes and Bills Composition Stamp Duties.*

9 GEO. 4, c. 23.

*An Act to enable Bankers in England to issue certain unstamped Promissory Notes and Bills of Exchange, upon Payment of a Composition in lieu of the Stamp Duties thereon (a).*

[19th June, 1828.]

WHEREAS it is expedient to permit all persons carrying on the business of bankers in England (except within the city of London or within three miles thereof), to issue their promissory notes payable to bearer on demand, or to order within a limited period after sight, and to draw bills of exchange payable to order on demand, or within a limited period after sight or date, on unstamped paper, upon payment of a composition in lieu of the stamp duties which would otherwise be payable upon such notes and bills respectively, and subject to the regulations hereinafter mentioned; be it therefore enacted, &c., that from and after the 1st day of July, 1828, it shall be lawful for any person or persons carrying on the

Certain bankers may issue unstamped pro-

(a. By the Statute Law Revision Act, 1873 (36 & 37 Vict. c. 91), sects. 16 and 17 are repealed.

business of a banker or bankers in England (except within the city of London, or within three miles thereof), having first duly obtained a licence for that purpose, and given security by bond in manner hereinafter mentioned, to issue, on unstamped paper, promissory notes for any sum of money amounting to 5*l.* or upwards, expressed to be payable to the bearer on demand, or to order, at any period not exceeding seven days after sight; and also to draw and issue, on unstamped paper, bills of exchange, expressed to be payable to order on demand, or at any period not exceeding seven days after sight, or twenty-one days after the date thereof; provided such bills of exchange be drawn upon a person or persons carrying on the business of a banker or bankers in London, Westminster, or the borough of Southwark, or provided such bills of exchange be drawn by any banker or bankers, at a town or place where he or they shall be duly licensed to issue unstamped notes and bills under the authority of this act, upon himself or themselves, or his or their co-partner or co-partners, payable at any other town or place where such banker or bankers shall also be duly licensed to issue such notes and bills as aforesaid.

missory notes and bills of exchange, subject to the regulations herein mentioned.

2. That it shall be lawful for any two or more of the commissioners of stamps to grant to all persons carrying on the business of bankers in England (except as aforesaid), who shall require the same, licences authorizing such persons to issue such promissory notes, and to draw and issue such bills of exchange as aforesaid, on unstamped paper; which said licences shall be and are hereby respectively charged with a stamp duty of 30*l.* for every such licence.

Commissioners of stamps may grant licences to issue unstamped notes and bills.

3. That a separate licence shall be taken out in respect of every town or place where any such unstamped promissory notes or bills of exchange as aforesaid shall be issued or drawn: provided always, that no person or persons shall be obliged to take out more than four licences in all for any number of towns or places in England; and in case any person or persons shall issue or draw such unstamped notes or bills as aforesaid, at more than four different towns or places, then, after taking out three distinct licences for three of such towns or places, such person or persons shall be entitled to have all the rest of such towns or places included in a fourth licence.

A separate licence to be taken for every place where such notes or bills shall be issued, but not to exceed four licences for any number of such places.

4. That every licence granted under the authority of this act shall specify all the particulars required by law to be specified in licences to be taken out by persons issuing promissory notes payable to bearer on demand, and allowed to be re-issued; and every such licence which shall be granted between the 10th day of October and the 11th day of November in any year shall be dated on the 11th day of October,

Regulations respecting licences.

and every such licence which shall be granted at any other time shall be dated on the day on which the same shall be granted; and every such licence shall (notwithstanding any alteration which may take place in any copartnership of persons to whom the same shall be granted) have effect and continue in force from the day of the date thereof until the 10th day of October then next following, both inclusive, and no longer.

Commissioners may cancel licences already taken out, and grant licences under this act in lieu thereof.

5. Provided always, that where any banker or bankers shall have obtained the licence required by law for issuing promissory notes payable to bearer on demand, at any town or place in England, and during the continuance of such licence shall be desirous of taking out a licence to issue at the same town or place unstamped promissory notes and bills of exchange under the provisions of this act, it shall be lawful for the commissioners of stamps to cancel and allow as spoiled the stamp upon the said first-mentioned licence, and in lieu thereof to grant to such banker or bankers a licence under the authority of this act: and every such last-mentioned licence shall also authorize the issuing and re-issuing of all promissory notes payable to the bearer on demand, which such banker or bankers may by law continue to issue or re-issue at the same town or place, on paper duly stamped.

Bankers while licensed under this act shall not issue, for the first time, notes on stamped paper.

6. Provided always, that if any banker or bankers, who shall take out a licence under the authority of this act, shall issue, under the authority either of this or any other act, any unstamped promissory notes for payment of money to the bearer on demand, such banker or bankers shall, so long as he or they shall continue licensed as aforesaid, make and issue on unstamped paper all his or their promissory notes for payment of money to the bearer on demand, of whatever amount such notes may be; and it shall not be lawful for such banker or bankers, during the period aforesaid, to issue for the first time any such promissory note as aforesaid on stamped paper.

Bankers licensed to issue unstamped notes or bills shall give security by bond, for the due performance of the conditions herein contained.

7. That before any licence shall be granted to any person or persons to issue or draw any unstamped promissory notes or bills of exchange under the authority of this act, such person or persons shall give security, by bond, to his Majesty, his heirs and successors, with a condition, that if such person or persons do and shall from time to time enter or cause to be entered in a book or books to be kept for that purpose, an account of all such unstamped promissory notes and bills of exchange as he or they shall so as aforesaid issue or draw, specifying the amount or value thereof respectively, and the several dates of the issuing thereof; and in like manner also, a similar account of all such promissory notes as having been issued as aforesaid, shall have been cancelled, and the dates

of the cancelling thereof, and of all such bills of exchange as, having been drawn or issued as aforesaid, shall have been paid, and the dates of the payment thereof; and do and shall from time to time, when thereunto requested, produce and show such accounts to, and permit the same to be examined and inspected by, the said commissioners of stamps, or any officer of stamps appointed under the hands and seals of the said commissioners for that purpose; and also do and shall deliver to the said commissioners of stamps half-yearly, (that is to say,) within fourteen days after the 1st day of January and the 1st day of July in every year, a just and true account in writing, verified upon the oaths or affirmations, (which any justice of the peace is hereby empowered to administer,) to the best of the knowledge and belief of such person or persons, and of his or their cashier, accountant, or chief clerk (*a*), or of such of them as the said commissioners shall require, of the amount or value of all unstamped promissory notes and bills of exchange, issued under the provisions of this or any former act, in circulation within the meaning of this act on a given day, (that is to say,) on Saturday in every week, for the space of half a year prior to the half-yearly day immediately preceding the delivery of such account, together with the average amount or value of such notes and bills so in circulation, according to such account; and also do and shall pay or cause to be paid to the receiver-general of stamp duties in Great Britain, or to some other person duly authorized by the commissioners of stamps to receive the same, as a composition for the duties which would otherwise have been payable for such promissory notes and bills of exchange issued or in circulation during such half-year, the sum of three shillings and sixpence for every one hundred pounds, and also for the fractional part of one hundred pounds, of the said average amount or value of such notes and bills in circulation, according to the true intent and meaning of this act; and on due performance thereof such bond shall be void, but otherwise the same shall be and remain in full force and virtue.

8. That every unstamped promissory note payable to the bearer on demand, issued under the provisions of this act, shall, for the purpose of payment of duty, be deemed to be in circulation from the day of the issuing to the day of the cancelling thereof, both days inclusive, excepting nevertheless the period during which such note shall be in the hands of the banker or bankers who first issued the same, or by whom the same shall be expressed to be payable; and that every unstamped promissory note payable to order, and every un-

For what  
period notes  
and bills are  
to be deemed  
in circulation.

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(*a*) The manager of the bank may make the affidavit. *Reg. v. Greenland*, L. R., 1 C. C. 65; 36 L. J., M. C. 37.

stamped bill of exchange so as aforesaid issued, shall, for the purpose aforesaid, be deemed to be in circulation from the day of the issuing to the day of the payment thereof, both days inclusive: provided always, that every such promissory note payable to order, and bill of exchange as aforesaid, which shall be paid in less than seven days from the issuing thereof, shall, for the purpose aforesaid, be included in the account of notes and bills in circulation on the Saturday next after the day of the issuing thereof as if the same were then actually in circulation.

Regulations respecting the bonds to be given pursuant to this act.

9. That in every bond to be given pursuant to the directions of this act the person or persons intending to issue or draw any such unstamped promissory notes and bills of exchange as aforesaid, or such and so many of the said persons as the commissioners of stamps shall require, shall be the obligors; and every such bond shall be taken in the sum of one hundred pounds, or in such larger sum as the said commissioners of stamps may judge to be the probable amount of the composition or duties that will be payable from such person or persons, under or by virtue of this act, during the period of one year; and it shall be lawful for the said commissioners to fix the time or times of payment of the said composition or duties, and to specify the same in the condition to every such bond; and every such bond may be required to be renewed from time to time, at the discretion of the said commissioners, and as often as the same shall be forfeited, or the parties to the same, or any of them, shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

Fresh bonds to be given on alterations of copartnerships.

10. That if any alteration shall be made in any copartnership of persons who shall have given any such security by bond as by this act is directed, whether such alteration shall be caused by the death or retirement of one or more of the partners of the firm, or by the accession of any additional or new partner or partners, a fresh bond shall be given by the remaining partner or partners, or the persons composing the new copartnership, as the case may be, which bond shall be taken as a security for the duties which may be due and owing, or may become due and owing, in respect of the unstamped notes and bills which shall have been issued by the persons composing the old copartnership, and which shall be in circulation at the time of such alteration, as well as for duties which shall or may be or become due or owing in respect of the unstamped notes and bills issued or to be issued by the persons composing the new copartnership; provided that no such fresh bond shall be rendered necessary by any such alteration as aforesaid in any copartnership of persons exceeding six in number, but that the bonds to be given by such last-mentioned copartnerships shall be taken as securities for

all the duties they may incur so long as they shall exist, or the persons composing the same, or any of them, shall carry on business in copartnership together, or with any other person or persons, notwithstanding any alteration in such copartnership; saving always the power of the said commissioners of stamps to require a new bond in any case where they shall deem it necessary for better securing the payment of the said duties.

11. That if any person or persons who shall have given security, by bond, to his Majesty, in the manner hereinbefore directed, shall refuse or neglect to renew such bond when forfeited, and as often as the same is by this act required to be renewed, such person or persons so offending shall, for every such offence, forfeit and pay the sum of 100*l*.

Penalty on bankers neglecting to renew their bonds.

12. That if any person or persons who shall be licensed under the provisions of this act shall draw or issue, or cause to be drawn or issued, upon unstamped paper, any promissory note payable to order, or any bill of exchange which shall bear date subsequent to the day on which it shall be issued, the person or persons so offending shall, for every such note or bill so drawn or issued, forfeit the sum of 100*l*.

Penalty for postdating unstamped notes or bills.

13. That nothing in this act contained shall extend, or be construed to extend, to exempt or relieve from the forfeitures or penalties imposed by any act or acts now in force, upon persons issuing promissory notes or bills of exchange not duly stamped as the law requires, any person or persons who, under any colour or pretence whatsoever, shall issue any unstamped promissory note or bill of exchange, unless such person or persons shall be duly licensed to issue such note or bill under the provisions of this act; and such note or bill shall be drawn and issued in strict accordance with the regulations and restrictions herein contained.

This act not to exempt from penalties any persons issuing unstamped notes or bills not in accordance herewith.

14. That all pecuniary forfeitures and penalties which may be incurred under any of the provisions of this act shall be recovered for the use of his Majesty, his heirs and successors, in his Majesty's Court of Exchequer at Westminster, by action of debt, bill, plaint or information, in the name of his Majesty's attorney or solicitor general in England.

Recovery of penalties.

15. Provided always, that nothing in this act contained shall extend, or be construed to extend to prejudice, alter or affect any of the rights, powers or privileges of the Governor and Company of the Bank of England.

Not to affect the privileges of the Bank of England.

16. [Where any bankers taking out licences under this act shall have stamps in their possession which will become useless, the commissioners may cancel such stamps, and make allowance for the same, if application be made within six calendar months next after the passing of the act.]

*Restraining Negotiation of Notes under 5l.*

9 GEO. 4, c. 65.

*An Act to restrain the Negotiation, in England, of Promissory Notes and Bills under a limited Sum, issued in Scotland or Ireland.*  
[15th July, 1828.]

7 Geo. 4, c. 6.

After 5th  
April, 1829,  
no corpora-  
tion or person  
shall utter in  
England  
notes or bills  
under 5l.  
which have  
been made or  
issued in  
Scotland or  
Ireland,  
under penalty  
of 20l.

WHEREAS an act was passed in the 7th year of his present Majesty's reign, intituled "An Act to limit, and after a certain period to prohibit, the issuing of promissory notes under a limited sum in England;" and doubts may arise how far the provisions of the said act may be effectual to restrain the circulating in England of certain notes, drafts, or undertakings made or issued in Scotland or Ireland: be it therefore enacted, &c., that if any body politic or corporate, or person or persons, shall, after the 5th day of April, 1829, by any art, device, or means whatsoever, publish, utter, negotiate, or transfer, in any part of England, any promissory or other note, draft, engagement, or undertaking in writing, made payable on demand to the bearer thereof, and being negotiable or transferable, for the payment of any sum of money less than 5l., or on which less than the sum of 5l. shall remain undischarged, which shall have been made or issued, or shall purport to have been made or issued, in Scotland or Ireland, or elsewhere out of England, wheresoever the same shall or may be payable, every such body politic or corporate, or person or persons, so publishing, uttering, negotiating, or transferring any such note, bill, draft, engagement, or undertaking, in any part of England, shall forfeit and pay for every such offence any sum not exceeding 20l. nor less than 5l., at the discretion of the justice of the peace who shall hear and determine such offence.

Mode of  
recovering  
penalties.

48 Geo. 3,  
c. 88.

2. That the penalties which may be incurred under the provisions of this act shall and may be recovered in a summary way, by information on complaint, before a justice or justices of the peace, and shall be levied and applied in the manner directed by an act passed in the 48th year of the reign of his late Majesty King George the Third, intituled "An Act to restrain the negotiation of promissory notes and inland bills of exchange under a limited sum in England," with respect to the penalties by the said last-mentioned act imposed; and all and every the clauses and provisions in the said last-mentioned act contained, relating to the recovery and application of the penalties thereby imposed, shall be applied and put in execution for the recovery and application of the penalties by this act imposed, as fully and effectually, to all intents and purposes, as if such clauses and provisions had been herein repeated and expressly re-enacted.

3. Provided always, that it shall and may be lawful for the lord high treasurer, or for the commissioners of his Majesty's Treasury, or any three or more of them, to order and direct that the whole or any part of any penalty which shall be incurred under this act shall and may be remitted, or mitigated or abated to such amount, and in such manner and upon such conditions as to such lord high treasurer or commissioners of the Treasury may seem fit and proper.

The Treasury may order a remission or mitigation of penalties.

4. Provided always, that nothing herein contained shall extend to any draft or order drawn by any person or persons on his, her, or their banker or bankers, for the payment of money held by such banker or bankers, person or persons, to the use of the person or persons by whom such draft or order shall be drawn.

Not to extend to drafts on bankers for the use of the drawer.

### *Returns of Bank Notes in Circulation.*

3 & 4 WILL. 4, c. 83.

*An Act to compel Banks issuing Promissory Notes payable to Bearer on Demand to make Returns of their Notes in Circulation, and to authorize Banks to issue Notes payable in London for less than 50l. (a). [28th August, 1833.]*

WHEREAS it is expedient that all corporations, copartnerships, and persons carrying on banking business, and making and issuing promissory notes payable to bearer on demand, should make returns of the amount of such notes in circulation: be it therefore enacted, &c., that all corporations and copartnerships carrying on banking business under the provisions of an act passed in the 7th year of the reign of his late Majesty King George the Fourth, chapter 46, intituled "An Act for the better regulating copartnerships of certain bankers in England" [setting forth the title of that act, ante, p. 588], as relates to the same, and all other persons carrying on banking business, and making and issuing promissory notes payable to bearer on demand, shall respectively keep weekly accounts from the passing of this act of the average amount of notes in circulation at the end of each week of the corporation, copartnership, or persons or person so carrying on banking business and keeping such weekly account; and shall, within one month after the 31st day of December after the passing of this act, make up from such weekly account an average

Partnerships and persons carrying on banking business and issuing promissory notes to keep accounts of the amount in circulation and make periodical returns therefrom to the stamp office in London.

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(a) Sects. 1 and 3 repealed by Statute Law Revision Act, 1874.

Such returns  
to be verified  
on oath.

Penalty for  
default, 500*l*.

False swear-  
ing punished  
as perjury.

Banks of  
more than six  
persons may  
draw on agent  
in London, on  
demand or  
otherwise, for  
less than 50*l*.,  
notwithstand-  
ing the Act  
7 Geo. 4,  
c. 46.

account of the amount of such notes in circulation during the period between the passing of this act and the making up such account; and shall also make up a like account at the end of each quarter ending on the 1st day of April, the 1st day of July, the 1st day of October, and the 1st day of January in the year 1834, and every subsequent year, of the average amount of notes in circulation in the preceding quarter, and shall return and deliver such account to the commissioners of stamps at the stamp office in London; and such accounts and returns shall be verified upon the oath of the secretary or accountant or some officer of the corporation, company, or copartnership, or persons or person so carrying on banking business and making such return, which oath shall be taken before any justice of the peace, and which oath any justice of the peace is hereby authorized to administer; and if any corporation, company, or copartnership, or persons or person so carrying on banking business, shall neglect to keep such weekly accounts, or to make out or to return or deliver such averages to the commissioners of stamps at the stamp office in London, or if any secretary, accountant, or other person verifying any such account or average shall return or deliver to the commissioners of stamps any false account or return of such averages, the corporation, company, or copartnership, or persons or person to whom any such account or averages, or such secretary, accountant, or person verifying the account, shall belong, shall forfeit for every such offence the sum of 500*l*., and the secretary or other person so offending shall also forfeit for every such offence the sum of 100*l*.; and any secretary, accountant, or other person who shall knowingly and wilfully take any false oath as to any such account or averages shall be subject to such pains and penalties as are by any law in force at the time of taking such oath enacted as to persons convicted of wilful and corrupt perjury.

2. That it shall be lawful for any body politic or corporate whatsoever, erected or to be erected, and for any other persons united or to be united in covenants or partnership, exceeding the number of six persons, carrying on business as bankers, to make any bill of exchange or promissory note of such corporation or copartnership payable in London by any agent of such corporation or copartnership in London, or to draw any bill of exchange or promissory note upon any such agent in London, payable on demand or otherwise in London, and for any less amount than 50*l*., any thing in the said recited act of the 7th year of the reign of his late Majesty King George the Fourth, or in any other act, to the contrary notwithstanding.

*The Bank of England Privileges Act, 1833.*

3 &amp; 4 WILL. 4, c. 98.

*An Act for giving to the Corporation of the Governor and Company of the Bank of England certain Privileges for a limited Period, under certain Conditions.* [29th August, 1833.]

WHEREAS an act was passed in the 39th and 40th years of the reign of his Majesty King George the Third, intituled "An Act for establishing an agreement with the Governor and Company of the Bank of England for advancing three millions towards the supply for the service of the year 1800:" and whereas it was by the recited act declared and enacted, that the said governor and company should be and continue a corporation, with such powers, authorities, emoluments, profits, and advantages, and such privileges of exclusive banking, as are in the said recited act specified, subject nevertheless to the powers and conditions of redemption, and on the terms in the said act mentioned: and whereas an act passed in the 7th year of the reign of his late Majesty King George the Fourth, chapter 46, intituled "An Act for the better regulating copartnerships of certain bankers in England" [setting out the title of the act, ante, p. 588], as relates to the same: and whereas it is expedient that certain privileges of exclusive banking should be continued to the said governor and company for a further limited period, upon certain conditions: and whereas the said Governor and Company of the Bank of England are willing to deduct and allow to the public, from the sums now payable to the said governor and company for the charges of management of the public unredeemed debt, the annual sum hereinafter mentioned, and for the period in this act specified, provided the privilege of exclusive banking specified in this act is continued to the said governor and company for the period specified in this act: may it therefore please your Majesty that it may be enacted; and be it enacted, &c., that the said Governor and Company of the Bank of England shall have and enjoy such exclusive privilege of banking as is given by this act, as a body corporate, for the period and upon the terms and conditions hereinafter mentioned, and subject to termination of such exclusive privilege at the time and in the manner in this act specified.

2. That during the continuance of the said privilege, no body politic or corporate, and no society or company, or persons united or to be united in covenants or partnerships, exceeding six persons, shall make or issue in London, or within 65 miles thereof, any bill of exchange or promissory note, or engagement for the payment of money on demand, or upon which any person holding the same may obtain payment on demand

39 & 40  
Geo. 3, c. 28.

7 Geo. 4,  
c. 46.

Bank of England to enjoy an exclusive privilege of banking upon certain conditions.

During such privilege, no banking company of more than six persons to issue notes payable on demand

within London, or 65 miles thereof.

demand: provided always, that nothing herein or in the said recited act of the 7th year of the reign of his late Majesty King George the Fourth contained shall be construed to prevent any body politic or corporate, or any society or company, or incorporated company or corporation, or copartnership, carrying on and transacting banking business at any greater distance than 65 miles from London, and not having any house of business or establishment as bankers in London, or within 65 miles thereof (except as hereinafter mentioned), to make and issue their bills and notes, payable on demand or otherwise, at the place at which the same shall be issued, being more than 65 miles from London, and also in London, and to have an agent or agents in London, or at any other place at which such bills or notes shall be made payable for the purpose of payment only, but no such bill or note shall be for any sum less than 5*l.*, or be re-issued in London, or within 65 miles thereof.

Any company or partnership may carry on business of banking in London, or within 65 miles thereof, upon the terms herein mentioned.

3. And whereas the intention of this act is, that the Governor and Company of the Bank of England should, during the period stated in this act (subject nevertheless to such redemption as is described in this act), continue to hold and enjoy all the exclusive privileges of banking given by the said recited act of the 39th and 40th years of the reign of his Majesty King George the Third aforesaid, as regulated by the said recited act of the seventh year of his late Majesty King George the Fourth, or any prior or subsequent act or acts of parliament, but no other or further exclusive privilege of banking: and whereas doubts have arisen as to the construction of the said acts, and as to the extent of such exclusive privilege; and it is expedient that all such doubts should be removed, be it therefore declared and enacted, that any body politic or corporate, or society, or company, or partnership, although consisting of more than six persons, may carry on the trade or business of banking in London, or within 65 miles thereof, provided that such body politic or corporate, or society, or company, or partnership do not borrow, owe, or take up in England any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by this act to the said Governor and Company of the Bank of England.

All notes of the Bank of England payable on demand which shall be issued out of London shall be payable at the

4. Provided always, and be it further enacted, that from and after the 1st day of August, 1834, all promissory notes payable on demand of the Governor and Company of the Bank of England which shall be issued at any place in that part of the United Kingdom called England out of London, where the trade and business of banking shall be carried on for and on behalf of the said Governor and Company of the

Bank of England, shall be made payable at the place where such promissory notes shall be issued; and it shall not be lawful for the said governor and company, or any committee, agent, cashier, officer, or servant of the said governor and company, to issue, at any such place out of London, any promissory note payable on demand which shall not be made payable at the place where the same shall be issued, any thing in the said recited act of the seventh year aforesaid to the contrary notwithstanding.

5. That upon one year's notice given within six months after the expiration of ten years from the 1st day of August, 1834, and upon repayment by parliament to the said governor and company, or their successors, of all principal money, interest, or annuities which may be due from the public to the said governor and company at the time of the expiration of such notice, in like manner as is hereinafter stipulated and provided, in the event of such notice being deferred until after the 1st day of August, 1855, the said exclusive privileges of banking granted by this act shall cease and determine at the expiration of such year's notice; and any vote or resolution of the House of Commons, signified by the speaker of the said house in writing, and delivered at the public office of the said governor and company, or their successors, shall be deemed and adjudged to be a sufficient notice (a).

6. That from and after the 1st day of August, 1834, unless and until parliament shall otherwise direct, a tender of a note or notes of the Governor and Company of the Bank of England, expressed to be payable to bearer on demand, shall be a legal tender, to the amount expressed in such note or notes, and shall be taken to be valid as a tender to such amount for all sums above 5*l.* on all occasions on which any tender of money may be legally made, so long as the Bank of England shall continue to pay on demand their said notes in legal coin: provided always, that no such note or notes shall be deemed a legal tender of payment by the Governor and Company of the Bank of England, or any branch bank of the said governor and company; but the said governor and company are not to become liable or be required to pay and satisfy, at any branch bank of the said governor and company, any note or notes of the said governor and company not made specially payable at such branch bank; but the said governor and company shall be liable to pay and satisfy at the Bank of England in London all notes of the said governor and company, or of any branch thereof.

place where  
issued, &c.

Exclusive  
privileges  
hereby given  
to end upon  
one year's  
notice given  
at the end of  
ten years  
after August,  
1834.

What shall  
be deemed  
sufficient  
notice.

Bank notes to  
be a legal  
tender, except  
at the bank  
and branch  
banks.

(a) Repealed by Statute Law Revision Act, 1874.

7 (*b*). [Bills not having more than three months to run, not subject to usury laws.]

Accounts of  
bullion, &c.  
and of notes  
in circulation  
to be sent  
weekly to the  
chancellor of  
the ex-  
chequer, &c.

8. That an account of the amount of bullion and securities in the Bank of England belonging to the said governor and company, and of notes in circulation, and of deposits in the said bank, shall be transmitted weekly to the chancellor of the exchequer for the time being, and such accounts shall be consolidated at the end of every month, and an average state of the bank accounts of the preceding three months, made from such consolidated accounts as aforesaid, shall be published every month in the next succeeding London Gazette.

Public to pay  
the bank one  
fourth part of  
the debt of  
14,686,800*l*.

(*c*) 9. That one fourth part of the debt of 14,686,800*l*., now due from the public to the Governor and Company of the Bank of England, shall and may be repaid to the said governor and company.

Capital stock  
of the bank  
may be  
reduced.

(*c*) 10. That a general court of proprietors of the said Governor and Company of the Bank of England shall be held at some time between the passing of this act and the 5th day of October, 1834, to determine upon the propriety of dividing and appropriating the sum of 3,638,250*l*., out of or by means of the sum to be repaid to the said governor and company as hereinbefore mentioned, or out of or by means of the fund to be provided for that purpose, amongst the several persons, bodies politic or corporate, who may be proprietors of the capital stock of the said governor and company on the said 5th day of October, 1834, and upon the manner and the time for making such division and appropriation not inconsistent with the provisions for that purpose herein contained; and in case such general court, or any adjourned general court, shall determine that it will be proper to make such division, then, but not otherwise, the capital stock of the said governor and company shall be and the same is hereby declared to be reduced from the sum of 14,553,000*l*., of which the same now consists, to the sum of 10,914,750*l*., making a reduction or difference of 3,638,250*l*. capital stock, and such reduction shall take place from and after the said 5th day of October, 1834; and thereupon, out of or by means of the sum to be repaid to the said governor and company as hereinbefore mentioned, or out of or by means of the fund to be provided for that purpose, the sum of 3,638,250*l*. sterling, or such proportion of the said fund as shall represent the same, shall be appropriated and divided amongst the several persons, bodies politic or corporate, who may be proprietors of the said sum of 14,553,000*l*. bank stock on the said 5th day of October,

(*b*) Repealed by the Statute Law Revision Act, 1861 (24 & 25 Vict. c. 101).

(*c*) Sects. 9—13 repealed by Statute Law Revision Act, 1874.

1834, at the rate of 25*l.* sterling for every 100*l.* of bank stock which such persons, bodies politic and corporate, may then be proprietors of or shall have standing in their respective names in the books kept by the said governor and company for the entry and transfer of such stock, and so in proportion for a greater or lesser sum.

(c) 11. That the reduction of the share of each proprietor of and in the capital stock of the said Governor and Company of the Bank of England, by the repayment of such one fourth part thereof, shall not disqualify the present governor, deputy governor, or directors, or any or either of them, or any governor, deputy governor, or director who may be chosen in the room of the present governor, deputy governor, or directors at any time before the general court of the said governor and company to be held between the 25th day of March and the 25th day of April, 1835 : provided that at the said general court, and from and after the same, no governor, deputy governor, or director of the said corporation shall be capable of being chosen such governor, deputy governor, or director, or shall continue in his or their respective offices, unless he or they respectively shall at the time of such choice have, and during such his respective office continue to have, in his and their respective name, in his and their own right, and for his and their own use, the respective sums or shares of and in the capital stock of the said corporation in and by the charter of the said governor and company prescribed as the qualification of governor, deputy governor, and directors respectively.

Governor, deputy governor or directors not to be disqualified by reduction of their share of the capital stock.

(c) 12. That no proprietor shall be disqualified from attending and voting at any general court of the said governor and company to be held between the said 5th day of October, 1834, and the 25th day of April, 1835, in consequence of the share of such proprietor of and in the capital stock of the said governor and company having been reduced by such repayment as aforesaid below the sum of 500*l.* of and in the said capital stock ; provided such proprietor had in his own name the full sum of 500*l.* of and in the said capital stock on the said 5th day of October, 1834 ; nor shall any proprietor be required, between the said 5th day of October, 1834, and the 25th day of April, 1835, to take the oath of qualification in the said charter.

Proprietors not to be disqualified.

(c) 13. That from and after the said 1st day of August, 1834, the said governor and company, in consideration of the privileges of exclusive banking given by this act, shall, during the continuance of such privileges, but no longer, deduct from the sums now payable to the said governor and company, for the charges of management of the public unredeemed debt, the

Bank to deduct the annual sum of 120,000*l.* from sum allowed for management of national debt.

annual sum of 120,000*l.*, anything in that act or acts of parliament or agreement to the contrary notwithstanding: provided always, that such deduction shall in no respect prejudice or affect the right of the said governor and company to be paid for the management of the public debt at the rate and according to the terms provided in an act passed in the 48th year of his late Majesty King George the Third, intituled "An Act to authorize the advancing for the public service, upon certain conditions, a proportion of the balance remaining in the Bank of England for payment of unclaimed dividends, annuities, and lottery prizes, and for regulating the allowances to be made for the management of the national debt."

48 Geo. 3, c. 4.

Provisions of  
act of 39 & 40  
Geo. 3, to  
remain in  
force, except  
as altered by  
this act.

14. That all the powers, authorities, franchises, privileges, and advantages given or recognized by the said recited act of the 39th and 40th years aforesaid, as belonging to or enjoyed by the Governor and Company of the Bank of England, or by any subsequent act or acts of parliament, shall be, and the same are hereby declared to be, in full force and continued by this act, except so far as the same are altered by this act, subject nevertheless to such redemption upon the terms and conditions following; (that is to say), that at any time, upon twelve months' notice to be given after the 1st day of August, 1855, and upon repayment by parliament to the said governor and company, or their successors, of the sum of 11,015,100*l.*, being the debt which will remain due from the public to the said governor and company after the payment of the one fourth of the debt of 14,686,800*l.*, as hereinbefore provided, without any deduction, discount, or abatement whatsoever, and upon payment to the said governor and company and their successors of all arrears of the sum of 100,000*l.* per annum in the said act of the thirty-ninth and fortieth years aforesaid mentioned, together with the interest or annuities payable upon the said debt or in respect thereof, and also upon repayment of all the principal and interest which shall be owing unto the said governor and company and their successors upon all such tallies, exchequer orders, exchequer bills, or parliamentary funds which the said governor and company or their successors shall have remaining in their hands or be entitled to at the time of such notice to be given as last aforesaid, then and in such case, and not till then (unless under the proviso hereinbefore contained), the said exclusive privileges of banking granted by this act shall cease and determine at the expiration of such notice of twelve months.

*Legal Procedure by Joint Stock Banks.*

1 &amp; 2 VICT. c. 96.

*An Act to amend, until the end of the next Session of Parliament, the Law relative to Legal Proceedings by certain Joint Stock Banking Companies against their own Members, and by such Members against the Companies.*

[14th August, 1838.]

WHEREAS by an act passed in the 7th year of the reign of his late Majesty King George the Fourth, chapter 46, intituled "An Act for the better regulating copartnerships of certain bankers in England" [setting forth the title of the act, ante, p. 588], as relates to the same, it was amongst other things enacted, that it should be lawful for any body politic or corporate erected for the purposes of banking, or for any number of persons united in covenants or copartnerships, although such persons so united or carrying on business together should consist of more than six in number, to carry on (subject to certain provisions therein contained) the trade or business of bankers in England, in like manner as copartnerships of bankers consisting of not more than six persons in number might lawfully do; and it was further enacted, that all actions and suits against any persons who might be at any time indebted to any such copartnership carrying on business under the provisions of the said act, and all other proceedings at law and in equity to be instituted on behalf of any such copartnership against any persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, might be commenced and prosecuted in the name of any one of the public officers for the time being of such copartnership, to be nominated as therein is mentioned, as the nominal party on behalf of such copartnership, and that actions or suits, and proceedings at law or in equity, to be instituted by any persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership, should be commenced and prosecuted against any one or more of the public officers for the time being of such copartnership as the nominal defendant on behalf of such copartnership, and that the death, resignation, removal, or any act of such public officer should not abate or prejudice any such action, suit, or other proceeding commenced against or on behalf of such copartnership, but that the same might be continued in the name of any other of the public officers of such copartnership for the time being: and whereas an act

6 Geo. 4, c. 42. was passed in the 6th year of the reign of his said late Majesty, intituled "An Act for the better regulation of copartnerships of certain bankers in Ireland:" and whereas it is expedient that the said acts should for a limited time be amended so far as relates to the powers enabling any such copartnership, not being a body corporate, to sue any of its own members, and the powers enabling any member of any such copartnership, not being a body corporate, to sue the said copartnership: be it therefore enacted, &c., that any person now being or having been, or who may hereafter be or have been, a member of any copartnership now carrying on or which may hereafter carry on the business of banking under the provisions of the said recited acts may *at any time during the continuance of this act (a)*, in respect of any demand which such person may have, either solely or jointly with any other person, against the said copartnership, or the funds or property thereof, commence and prosecute, either solely or jointly with any other person (as the case may require), any action, suit, or other proceeding at law or in equity against any public officer appointed or to be appointed under the provisions of the said acts to sue and be sued on the behalf of the said copartnership; and that any such public officer may in his own name commence and prosecute any action, suit, or other proceeding at law or in equity, against any person being or having been a member of the said copartnership, either alone or jointly with any other person, against whom any such copartnership has or may have any demand whatsoever; and that every person being or having been a member of any such copartnership shall, either solely or jointly with any other person (as the case may require), be capable of proceeding against any such copartnership by their public officer, and be liable to be proceeded against, by or for the benefit of the said copartnership, by such public officer as aforesaid, by such proceedings and with the same legal consequences as if such person had not been a member of the said copartnership; and that no action or suit shall in anywise be affected or defeated by reason of the plaintiffs or defendants or any of them respectively, or any other person in whom any interest may be averred, or who may be in anywise interested or concerned in such action, being or having been a member of the said copartnership; and that all such actions, suits, and proceedings shall be conducted and have effect as if the same had been between strangers.

Banking copartnerships may sue and be sued.

Proceedings in an action may be pleaded in

2. That in case the merits of any demand by or against any such copartnership shall have been determined in any action or suit by or against any such public officer, the proceedings

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(a) Repealed by Statute Law Revision Act, 1874.

in such action or suit may be pleaded in bar of any other action or suit by or against the public officer of the same co-partnership for the same demand. bar of any other action.

3. That all the provisions of the said recited acts relative to actions, suits, and proceedings commenced or prosecuted under the authority thereof, shall be applicable to actions, suits, and proceedings commenced or prosecuted under the authority of this act. Extending provisions of recited acts to present act.

4. That no claim or demand which any member of any such copartnership may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits, or bonus payable or apportionable in respect of such share, shall be capable of being set off, either at law or in equity, against any demand which such copartnership may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits, or bonus payable or apportionable in respect thereof. A member's share in capital of copartnership not to be set off against any demand which such copartnership may have against him.

5. That this act shall continue in force until the end of the next session of parliament; and that any such action, suit, or other proceeding as aforesaid, which during the continuance of this act may have been commenced or instituted, shall (notwithstanding this act may have expired) be carried on in all respects whatsoever as if this act had continued in force (a). Continuance of act (a).

### *Legal Procedure by Joint Stock Banks.*

3 & 4 VICT. c. 111.

*An Act to continue until the 31st day of August, 1842, and to extend, the Provisions of an Act of the First and Second Years of Her present Majesty, relating to Legal Proceedings by certain Joint Stock Banking Companies against their own Members, and by such Members against the Companies.*  
[11th August, 1840.]

WHEREAS an act was passed in the 1st and 2nd years of the reign of her present Majesty, intituled "An Act to extend, until the end of the next session of parliament, the law relative to legal proceedings by certain joint stock banking companies against their own members, and by such members against the companies:" and whereas the said act has been continued until the 31st day of August, 1840, by an act passed 1 & 2 Vict. c. 96.

(a) This act was continued by 2 & 3 Vict. c. 68, and by 3 & 4 Vict. c. 111, and was made perpetual by 5 & 6 Vict. c. 85. Sect. 5 has been repealed by Statute Law Revision Act, 1874.

Recited act  
continued.

Punishing  
members of  
banking com-  
panies em-  
bezzling  
notes, &c.

3 & 4 Will. 4,  
c. 98.

in the last session of parliament, and it is expedient that the same should be further continued: be it therefore enacted, &c., that the said first-recited act shall be further continued until the 31st day of August, 1842 (*a*).

2. And whereas it is expedient to extend the provisions of the said act hereby continued in manner hereinafter stated; be it enacted, that if any person or persons, being a member or members of any banking copartnership within the meaning of the said act, or of any other banking copartnership consisting of more than six persons, formed under or in pursuance of an act passed in the 3rd and 4th years of the reign of King William the Fourth, intituled "An Act for giving to the corporation of the Governor and Company of the Bank of England certain privileges, for a limited period, under certain conditions," *shall steal or embezzle any money, goods, effects, bills, notes, securities, or other property of or belonging to any such copartnership, or* (*a*) shall commit any fraud, forgery, crime, or offence against or with intent to injure or defraud any such copartnership, such member or members shall be liable to indictment, information, prosecution, or other proceeding in the name of any of the officers for the time being of any such copartnership in whose name any action or suit might be lawfully brought against any member or members of any such copartnership for every such fraud, forgery, crime, or offence, and may thereupon be lawfully convicted, as if such person or persons had not been or was or were not a member or members of such copartnership; any law, usage, or custom to the contrary notwithstanding.

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*Spiritual Persons prohibited being Members of Joint Stock Banks.*

4 VICT. c. 14.

*An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships* (*b*). [18th May, 1841.]

WHEREAS divers associations and copartnerships, consisting of more than six members or shareholders, have from time to time been formed for the purpose of being engaged in and carrying on the business of banking and divers other trades

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(*a*) Repealed, as to sect. 1, and the words in *italics* in sect. 2, by Statute Law Revision Act, 1874.

(*b*) This statute is a re-enactment of 1 Vict. c. 10, originally temporary and limited in operation, and repealed by the Statute Law Revision Act, 1861 (24 & 25 Vict. c. 101).

and dealings for gain and profit, and have accordingly for some time past been and are now engaged in carrying on the same by means of boards of directors or managers, committees or other officers, acting on behalf of all the members or shareholders of or persons otherwise interested in such associations or copartnerships: and whereas divers spiritual persons, having or holding dignities, prebends, canonries, benefices, stipendiary curacies, or lectureships, have been and are members or shareholders of or otherwise interested in divers of such associations and copartnerships: and whereas it is expedient to render legal and valid all contracts entered into by such associations or copartnerships, although the same may now be void by reason of such spiritual persons being or having been such members or shareholders or otherwise interested as aforesaid; be it therefore enacted, &c., that no such association or copartnership already formed or which may be hereafter formed, nor any contract either as between the members, partners, or shareholders composing such association or copartnership for the purposes thereof, or as between such association or copartnership and other persons, heretofore entered into, or which shall be entered into by any such association or copartnership already formed or hereafter to be formed, shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever, by reason only of any such spiritual person as aforesaid being or having been a member, partner, or shareholder of or otherwise interested in the same, but all such associations and copartnerships shall have the same validity and all such contracts shall and may be enforced in the same manner to all intents and purposes as if no such spiritual person had been or was a member, partner, shareholder of or interested in such association or copartnership: provided always, that it shall not be lawful for any spiritual person holding any cathedral preferment, benefice, curacy, or lectureship, or who shall be licensed or allowed to perform the duties of any ecclesiastical office, to act as a director or managing partner, or to carry on such trade or dealing as aforesaid in person.

No association or copartnership, or contract entered into by any of them, to be illegal or void by reason only of spiritual persons being members thereof.

No spiritual person beneficed or performing ecclesiastical duty to act as director.

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*Bank Notes Issue Regulation, and Bank of England Privileges Act.*

7 & 8 VICT. c. 32.

*An Act to regulate the Issue of Bank Notes, and for giving to the Governor and Company of the Bank of England certain Privileges for a limited Period.* [19th July, 1844.]

WHEREAS it is expedient to regulate the issue of bills or notes payable on demand: and whereas an act was passed in the

3 & 4 Will. 4,  
c. 98.

Bank to  
establish a  
separate de-  
partment for  
the issue of  
notes.

4th year of the reign of his late Majesty King William the Fourth, intituled "An Act for giving to the corporation of the Governor and Company of the Bank of England certain privileges for a limited period, under certain conditions;" and it is expedient that the privileges of exclusive banking therein mentioned should be continued to the said Governor and Company of the Bank of England, with such alterations as are herein contained, upon certain conditions: may it therefore please your Majesty that it may be enacted; and be it enacted, &c., that from and after the 31st day of August, 1844, the issue of promissory notes of the Governor and Company of the Bank of England, payable on demand, shall be separated and thenceforth kept wholly distinct from the general banking business of the said governor and company; and the business of and relating to such issue shall be thenceforth conducted and carried on by the said governor and company in a separate department to be called "The Issue Department of the Bank of England," subject to the rules and regulations hereinafter contained; and it shall be lawful for the court of directors of the said governor and company, if they shall think fit, to appoint a committee or committees of directors for the conduct and management of such issue department of the Bank of England, and from time to time to remove the members and define, alter, and regulate the constitution and powers of such committee, as they shall think fit, subject to any bye-laws, rules or regulations which may be made for that purpose: provided nevertheless, that the said issue department shall always be kept separate and distinct from the banking department of the said governor and company.

Management  
of the issue  
by Bank of  
England.

2. That upon the 31st day of August, 1844, there shall be transferred, appropriated, and set apart by the said governor and company to the issue department of the Bank of England securities to the value of fourteen million pounds, whereof the debt due by the public to the said governor and company shall be and be deemed a part; and there shall also at the same time be transferred, appropriated, and set apart by the said governor and company to the said issue department so much of the gold coin and gold and silver bullion then held by the Bank of England as shall not be required by the banking department thereof; and thereupon there shall be delivered out of the said issue department into the said banking department of the Bank of England such an amount of Bank of England notes as, together with the Bank of England notes then in circulation, shall be equal to the aggregate amount of the securities, coin, and bullion so transferred to the said issue department of the Bank of England; and the whole amount of Bank of England notes then in circulation, including those delivered to the banking department of the Bank of England

as aforesaid, shall be deemed to be issued on the credit of such securities, coin, and bullion so appropriated and set apart to the said issue department; and from thenceforth it shall not be lawful for the said governor and company to increase the amount of securities for the time being in the said issue department, save as hereinafter is mentioned, but it shall be lawful for the said governor and company to diminish the amount of such securities, and again to increase the same to any sum not exceeding in the whole the sum of fourteen million pounds, and so from time to time as they shall see occasion; and from and after such transfer and appropriation to the said issue department as aforesaid it shall not be lawful for the said governor and company to issue Bank of England notes, either into the banking department of the Bank of England, or to any persons or person whatsoever, save in exchange for other Bank of England notes, or for gold coin or for gold or silver bullion received or purchased for the said issue department under the provisions of this act, or in exchange for securities acquired and taken in the said issue department under the provisions herein contained: provided always, that it shall be lawful for the said governor and company in their banking department to issue all such Bank of England notes as they shall at any time receive from the said issue department or otherwise, in the same manner in all respects as such issue would be lawful to any other person or persons.

3. And whereas it is necessary to limit the amount of silver bullion on which it shall be lawful for the issue department of the Bank of England to issue Bank of England notes; be it therefore enacted, that it shall not be lawful for the Bank of England to retain in the issue department of the said bank at any one time an amount of silver bullion exceeding one fourth part of the gold coin and bullion at such time held by the Bank of England in the issue department.

Proportion of silver bullion to be retained in the issue department.

4. That from and after the 31st day of August, 1844, all persons shall be entitled to demand from the issue department of the Bank of England Bank of England notes in exchange for gold bullion, at the rate of 3*l.* 17*s.* 9*d.* per ounce of standard gold: provided always, that the said governor and company shall in all cases be entitled to require such gold bullion to be melted and assayed by persons approved by the said governor and company at the expense of the parties tendering such gold bullion.

All persons may demand of the issue department notes for gold bullion.

5. Provided always, that if any banker who on the 6th day of May, 1844, was issuing his own bank notes shall cease to issue his own bank notes, it shall be lawful for her Majesty in council at any time after the cessation of such issue, upon the application of the said governor and company, to authorize

Power to increase securities in the issue department, and issue additional notes.

and empower the said governor and company to increase the amount of securities in the said issue department beyond the total sum or value of fourteen million pounds, and thereupon to issue additional Bank of England notes to an amount not exceeding such increased amount of securities specified in such order in council, and so from time to time: provided always, that such increased amount of securities specified in such order in council, shall in no case exceed the proportion of two-thirds the amount of bank notes which the banker so ceasing to issue may have been authorized to issue under the provisions of this act; and every such order in council shall be published in the next succeeding London Gazette.

Account to be rendered by the Bank of England.

6. That an account of the amount of Bank of England notes issued by the issue department of the Bank of England and of gold coin and of gold and silver bullion respectively, and of securities in the said issue department, and also an account of the capital stock, and the deposits, and of the money and securities belonging to the said governor and company in the banking department of the Bank of England, on some day in every week to be fixed by the commissioners of stamps and taxes, shall be transmitted by the said governor and company weekly to the said commissioners in the form prescribed in the schedule hereto annexed marked (A.) (a), and shall be published by the said commissioners in the next succeeding London Gazette in which the same may be conveniently inserted.

Bank of England exempted from stamp duty upon their notes.

7. That from and after the said 31st day of August, 1844, the said Governor and Company of the Bank of England shall be released and discharged from the payment of any stamp duty, or composition in respect of stamp duty, upon or in respect of their promissory notes payable to bearer on demand; and all such notes shall thenceforth be and continue free and wholly exempt from all liability to any stamp duty whatsoever.

Bank to allow 180,000*l.* per annum.

8. That from and after the said 31st day of August, 1844, the payment or deduction of the annual sum of 180,000*l.* made by the said governor and company, under the provisions of the said act passed in the fourth year of the reign of his late Majesty King William the Fourth, out of the sums payable to them for the charges of management of the public unredeemed debt, shall cease, and in lieu thereof the said governor and company, in consideration of the privileges of exclusive banking, and the exemption from stamp duties, given to them by this act, shall, during the continuance of such privileges and such exemption respectively, but no longer, deduct and allow to the public, from the sums now payable by law to the said

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(a) See note (a), post, p. 623.

governor and company for the charges of management of the public unredeemed debt, the annual sum of 180,000*l.*, anything in any act or acts of parliament, or in any agreement, to the contrary notwithstanding: provided always, that such deduction shall in no respect prejudice or affect the rights of the said governor and company to be paid for the management of the public debt at the rate and according to the terms provided in an act passed in the 48th year of the reign of his late Majesty King George the Third, intituled "An Act to authorize the advancing for the public service, upon certain conditions, a proportion of the balance remaining in the Bank of England, for the payment of unclaimed dividends, annuities, and lottery prizes, and for regulating the allowances to be made for the management of the national debt" (b).

48 Geo. 3,  
c. 4.

9. That in case, under the provisions hereinbefore contained, the securities held in the said issue department of the Bank of England shall at any time be increased beyond the total amount of fourteen million pounds, then and in each and every year in which the same shall happen, and so long as such increase shall continue, the said governor and company

Bank to allow  
the public the  
profits of in-  
creased circula-  
tion.

(a) The following is the schedule referred to:—

#### SCHEDULE (A.)

##### BANK OF ENGLAND.

An Account pursuant to the act 7 & 8 Vict. cap. for the week  
ending on the day of .

##### Issue Department.

£	£
Notes issued.....	Government debt .....
	Other securities .....
	Gold coin and bullion.....
	Silver bullion .....
£	£

Dated the day of 18 . ——— cashier.

##### Banking Department.

£	£
Proprietors' capital .....	Government securities (in-
Rest .....	cluding dead weight an-
Public deposits (to include	nuity) .....
exchequer, savings banks,	Other securities .....
commissioners of national	Notes.....
debt and dividend accounts)	Gold and silver coin .....
Other deposits .....	
Seven-day and other bills..	
£	£

Dated the day of 18 . ——— cashier.

(b) Repealed by Statute Law Revision Act, 1874.

shall, in addition to the said annual sum of 180,000*l.*, make a further payment or allowance to the public, equal in amount to the net profit derived in the said issue department during the current year from such additional securities, after deducting the amount of the expenses occasioned by the additional issue during the same period, which expenses shall include the amount of any and every composition or payment to be made by the said governor and company to any banker in consideration of the discontinuance at any time hereafter of the issue of bank notes by such banker; *and such further payment or allowance to the public by the said governor and company shall, in every year while the public shall be entitled to receive the same, be deducted from the amount by law payable to the said governor and company for the charges of management of the unredeemed public debt, in the same manner as the said annual sum of 180,000*l.* is hereby directed to be deducted therefrom (a).*

No new bank  
of issue.

10. That from and after the passing of this act no person other than a banker who, on the 6th day of May, 1844, was lawfully issuing his own bank notes shall make or issue bank notes in any part of the United Kingdom.

Restriction  
against issue  
of bank notes.

11. That from and after the passing of this act it shall not be lawful for any banker to draw, accept, make, or issue, in England or Wales, any bill of exchange or promissory note or engagement for the payment of money payable to bearer on demand, or to borrow, owe, or take up, in England or Wales, any sums or sum of money on the bills or notes of such banker payable to bearer on demand, save and except that it shall be lawful for any banker who was on the 6th day of May, 1844, carrying on the business of a banker in England or Wales, and was then lawfully issuing, in England or Wales, his own bank notes, under the authority of a licence to that effect, to continue to issue such notes to the extent and under the conditions hereinafter mentioned, but not further or otherwise; and the right of any company or partnership to continue to issue such notes shall not be in any manner prejudiced or affected by any change which may hereafter take place in the personal composition of such company or partnership, either by the transfer of any shares or share therein, or by the admission of any new partner or member thereto, or by the retirement of any present partner or member therefrom: provided always, that it shall not be lawful for any company or partnership now consisting of only six or less than six persons to issue bank notes at any time after the number of partners therein shall exceed six in the whole.

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(a) Repealed, as to words in *italics*, by Statute Law Revision Act, 1874.

12. That if any banker in any part of the United Kingdom who, after the passing of this act, shall be entitled to issue bank notes shall become bankrupt, or shall cease to carry on the business of a banker, or shall discontinue the issue of bank notes, either by agreement with the Governor and Company of the Bank of England or otherwise, it shall not be lawful for such banker at any time thereafter to issue any such notes.

Bankers  
ceasing to  
issue notes  
may not re-  
sume.

13. That every banker claiming under this act to continue to issue bank notes in England or Wales shall, within one month next after the passing of this act, give notice in writing to the commissioners of stamps and taxes, at their head office in London, of such claim, and of the place and name and firm at and under which such banker has issued such notes during the twelve weeks next preceding the 27th day of April last; and thereupon the said commissioners shall ascertain if such banker was, on the 6th day of May, 1844, carrying on the business of a banker, and lawfully issuing his own bank notes in England or Wales, and if it shall so appear then the said commissioners shall proceed to ascertain the average amount of the bank notes of such banker which were in circulation during the said period of twelve weeks preceding the 27th day of April last, according to the returns made by such banker in pursuance of the act passed in the 4th and 5th years of the reign of her present Majesty, intituled "An Act to make further provision relative to the returns to be made by banks of the amount of their notes in circulation;" and the said commissioners, or any two of them, shall certify under their hands to such banker the said average amount, when so ascertained as aforesaid; and it shall be lawful for every such banker to continue to issue his own bank notes after the passing of this act: provided nevertheless, that such banker shall not at any time after the 10th day of October, 1844, have in circulation upon the average of a period of four weeks, to be ascertained as hereinafter mentioned, a greater amount of notes than the amount so certified.

Existing  
banks of issue  
to continue  
under certain  
limitations.

4 & 5 Vict.  
c. 50.

14. Provided always, that if it shall be made to appear to the commissioners of stamps and taxes that any two or more banks have, by written contract or agreement (which contract or agreement shall be produced to the said commissioners), become united within the twelve weeks next preceding such 27th day of April as aforesaid, it shall be lawful for the said commissioners to ascertain the average amount of the notes of each such bank in the manner hereinbefore directed, and to certify the average amount of the notes of the two or more banks so united as the amount which the united bank shall thereafter be authorized to issue, subject to the regulations of this act.

Provision for  
united banks.

Duplicate  
certificate to  
be published  
in the  
Gazette.

Gazette to be  
evidence.

In case banks  
become  
united, com-  
missioners to  
certify the  
amount of  
bank notes  
which each  
bank was  
authorized to  
issue.

Penalty on  
banks issuing  
in excess.

Issuing banks  
to render  
accounts.

15. That the commissioners of stamps and taxes shall, at the time of certifying to any banker such particulars as they are hereinbefore required to certify, also publish a duplicate of their certificate thereof in the next succeeding London Gazette in which the same may be conveniently inserted; and the gazette in which such publication shall be made shall be conclusive evidence in all courts whatsoever of the amount of bank notes which the banker named in such certificate or duplicate is by law authorized to issue and to have in circulation as aforesaid.

16. That in case it shall be made to appear to the commissioners of stamps and taxes, at any time hereafter, that any two or more banks, each such bank consisting of not more than six persons, have, by written contract or agreement (which contract or agreement shall be produced to the said commissioners), become united subsequently to the passing of this act, it shall be lawful to the said commissioners, upon the application of such united bank, to certify, in manner hereinbefore mentioned, the aggregate of the amounts of bank notes which such separate banks were previously authorized to issue, and so from time to time; and every such certificate shall be published in manner hereinbefore directed; and from and after such publication the amount therein stated shall be and be deemed to be the limit of the amount of bank notes which such united bank may have in circulation: provided always, that it shall not be lawful for any such united bank to issue bank notes at any time after the number of partners therein shall exceed six in the whole.

17. That if the monthly average circulation of bank notes of any banker, taken in the manner hereinafter directed, shall at any time exceed the amount which such banker is authorized to issue and to have in circulation under the provisions of this act, such banker shall in every such case forfeit a sum equal to the amount by which the average monthly circulation, taken as aforesaid, shall have exceeded the amount which such banker was authorized to issue and to have in circulation as aforesaid.

18. That every banker in England and Wales who, after the 10th day of October, 1844, shall issue bank notes shall on some one day in every week after the 19th day of October, 1844 (such day to be fixed by the commissioners of stamps and taxes) transmit to the said commissioners an account of the amount of the bank notes of such banker in circulation on every day during the week ending on the next preceding Saturday, and also an account of the average amount of the bank notes of such banker in circulation during the same week; and on completing the first period of four weeks, and so on completing each successive period of four weeks, every such banker shall annex to such

account the average amount of bank notes of such banker in circulation during the said four weeks, and also the amount of bank notes which such banker is authorized to issue under the provisions of this act; and every such account shall be verified by the signature of such banker or his chief cashier, or, in the case of a company or partnership, by the signature of a managing director or partner or chief cashier of such company or partnership, and shall be made in the form to this act annexed marked (B.) (a); and so much of the said return as states the weekly average amount of the notes of such bank shall be published by the said commissioners in the next succeeding London Gazette in which the same may be conveniently inserted; and if any such banker shall neglect or refuse to render any such account in the form and at the time required by this act, or shall at any time render a false account, such banker shall forfeit the sum of 100*l.* for every such offence.

19. That for the purpose of ascertaining the monthly average amount of bank notes of each banker in circulation the aggregate of the amount of bank notes of each such banker in circulation on every day of business during the first com- Mode of  
ascertaining  
the average  
amount of  
bank notes of  
each banker

(a) The schedule is as follows:—

SCHEDULE (B.)

Name and title as set forth	}		
in the licence .....	}	_____	Bank.
Name of the firm .....		_____	Firm.
Insert head office or prin-	}	_____	
cipal place of issue ....	}	_____	Place.

An Account pursuant to the act 7 & 8 Vict. cap. \_\_\_\_\_ of the notes of the  
said bank in circulation during the week ending Saturday the  
day of \_\_\_\_\_ 18 .

Monday .....	
Tuesday .....	
Wednesday .....	
Thursday .....	
Friday .....	
Saturday .....	

6)

Average of the week ....

[To be annexed to this account at the end of each period of four weeks.]

Amount of notes authorized by law ..... £

Average amount in circulation during the four } £  
weeks ending as above .....

I, being [the banker, chief cashier, managing director, or partner of  
the bank, as the case may be], do hereby certify that the above is a  
true account of the notes of the said bank in circulation during the week  
above written.

(Signed)

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

s s 2

in circulation during the first four weeks after 10th October, 1844.

Commissioners of stamps and taxes empowered to cause the books of bankers containing accounts of their bank notes in circulation to be inspected.

plete period of four weeks next after the 10th day of October, 1844, such period ending on a Saturday, shall be divided by the number of days of business in such four weeks, and the average so ascertained shall be deemed to be the average of bank notes of each such banker in circulation during such period of four weeks, and so in each successive period of four weeks, and such average is not to exceed the amount certified by the commissioners of stamps and taxes as aforesaid.

20. And whereas, in order to insure the rendering of true and faithful accounts of the amount of bank notes in circulation as directed by this act, it is necessary that the commissioners of stamps and taxes should be empowered to cause the books of bankers issuing such notes to be inspected, as hereinafter mentioned: be it therefore enacted, that all and every the book and books of any banker who shall issue bank notes under the provisions of this act in which shall be kept, contained, or entered any account, minute, or memorandum of or relating to the bank notes issued or to be issued by such banker, or of or relating to the amount of such notes in circulation, from time to time, or any account, minute, or memorandum, the sight or inspection whereof may tend to secure the rendering of true accounts of the average amount of such notes in circulation, as directed by this act, or to test the truth of any such account, shall be open for the inspection and examination, at all seasonable times, of any officer of stamp duties authorized in that behalf by writing, signed by the commissioners of stamps and taxes or any two of them; and every such officer shall be at liberty to take copies of or extracts from any such book or account as aforesaid; and if any banker or other person keeping any such book, or having the custody or possession thereof, or power to produce the same, shall, upon demand made by any such officer, showing (if required) his authority in that behalf, refuse to produce any such book to such officer for his inspection or examination, or to permit him to inspect and examine the same, or to take copies thereof or extracts therefrom, or of or from any such account, minute, or memorandum as aforesaid kept, contained, or entered therein, every such banker or other person so offending shall for every such offence forfeit the sum of 100*l*.: provided always, that the said commissioners shall not exercise the powers aforesaid without the consent of the commissioners of her Majesty's Treasury.

21. That every banker in England and Wales who is now carrying on or shall hereafter carry on business as such shall on the 1st day of January in each year, or within fifteen days thereafter, make a return to the commissioners of stamps and taxes at their head office in London of his name, residence, and occupation, or in the case of a company or partnership, of

Penalty for refusing to allow such inspection.

All bankers to return names once a year to the stamp office.

the name, residence, and occupation of every person composing or being a member of such company or partnership, and also the name of the firm under which such banker, company, or partnership carry on the business of banking, and of every place where such business is carried on; and if any such banker, company, or partnership shall omit or refuse to make such return within fifteen days after the said 1st day of January, or shall wilfully make other than a true return of the persons as herein required, every banker, company, or partnership so offending shall forfeit and pay the sum of 50*l.*; and the said commissioners of stamps and taxes shall on or before the 1st day of March in every year publish in some newspaper circulating within each town or county respectively a copy of the return so made by every banker, company, or partnership carrying on the business of bankers within such town or county respectively, as the case may be.

22. That every banker who shall be liable by law to take out a licence from the commissioners of stamps and taxes to authorize the issuing of notes or bills shall take out a separate and distinct licence for every town or place at which he shall, by himself or his agent, issue any notes or bills requiring such licence to authorize the issuing thereof, any thing in any former act contained to the contrary thereof notwithstanding: provided always, that no banker who on or before the 6th day of May, 1844, had taken out four such licences, which on the said last-mentioned day were respectively in force, for the issuing of any such notes or bills at more than four separate towns or places, shall at any time hereafter be required to take out or to have in force at one and the same time more than four such licences to authorize the issuing of such notes or bills at all or any of the same towns or places specified in such licences in force on the said 6th day of May, 1844, and at which towns or places respectively such bankers had on or before the said last-mentioned day issued such notes or bills in pursuance of such licences or any of them respectively.

Bankers to take out a separate licence for every place at which they issue notes or bills.

Proviso in favour of bankers who had four such licences in force on the 6th of May, 1844.

23. And whereas the several bankers named in the schedule hereto annexed marked (C.) (a) have ceased to issue their own bank notes under certain agreements with the Governor and Company of the Bank of England; and it is expedient that such agreement should cease and determine on the 31st day of December next, and that such bankers should receive by way of compensation such composition as hereafter mentioned; and a list of such bankers, and a statement of the maximum sums in respect of which each such banker is to receive compensation, hath been delivered to the commissioners of stamps and taxes, signed by the chief cashier of the Bank of Eng-

Compensation to certain bankers named in the schedule.

(a) See note (c), post, p. 630.

land; be it therefore enacted, that *the several agreements subsisting between the said governor and company and the several bankers mentioned in the schedule hereto relating to the issue of Bank of England notes shall cease and determine on the 31st day of December next; and from and after that day (b) the said governor and company shall pay and allow to the several bankers named in the schedule hereto marked (C.) (c), so long as such bankers shall be willing to receive the same, a composition at and after the rate of 1*l.* per centum per annum on the average amount of the Bank of England notes issued by such bankers respectively and actually remaining in circulation, to be ascertained as follows; (that is to say,) on some day in the month of April, 1845, to be determined by the said governor and company, an account shall be taken of the Bank of England notes delivered to such bankers respectively by the said governor and company within three months next preceding, and of such of the said Bank of England notes as shall have been returned to the Bank of England, and the balance shall be deemed to be the amount of the Bank of England notes issued by such bankers respectively and kept in circulation; and a similar account shall be taken at in-*

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(b) As to words in *italics* repealed by Statute Law Revision Act, 1874.

(c) SCHEDULE (C.)

Banks which have ceased to issue their own bank notes under certain agreements with the Governor and Company of the Bank of England.

Bank of Liverpool.

J. Barned & Co.

Biddulph, Brothers & Co.

Birmingham Banking Co.

Birmingham Town and District Bank.

Birmingham and Midland Banking Co.

Burgess & Son.

Coopers & Purton.

Cuncliffes, Brookes & Co.

Deane, Littlehales & Deane.

Dendy, Comper & Co.

Devon and Cornwall Banking Co.

Grants & Gillman.

Hampshire Banking Co.

James W. R. Hall.

J. M. Head & Co.

Henty, Upperton & Olliver.

Thomas Kinnersly & Sons.

R. J. Lambton & Co.

Liverpool Commercial Banking Co.

Liverpool Union Bank.

Liverpool Borough Bank.

Manchester and Liverpool District Banking Co.

Manchester and Salford Banking Co.  
Monmouth and Glamorgan Banking Co.

Moss & Co.

Mangles, Brothers.

Newcastle Commercial Banking Co.

Newcastle-on-Tyne Joint Stock Banking Co.

North of England Joint Stock Banking Co.

Northumberland and Durham District Bank.

Portsmouth and South Hants Bank Co.

T. & R. Raikes & Co.

Robinson & Brodhurst.

Sheffield Union Bank.

John Stoveld.

Sunderland Joint Stock Banking Co.

Tugwell & Co.

Union Bank of Manchester.

Vivian, Kitson & Co.

Watts, Whiteway & Co.

J. & J. C. Wright & Co.

Webb, Holbrook & Spencer.

tervals of three calendar months; and the average of the balances ascertained on taking four such accounts shall be deemed to be the average amount of Bank of England notes issued by such bankers respectively and kept in circulation during the year 1845, and on which amount such bankers are respectively to receive the aforesaid composition of one per centum for the year 1845; and similar accounts shall be taken in each succeeding year; but in each year such accounts shall be taken in different months from those in which the accounts of the last preceding year were taken, and on different days of the month, such months and days to be determined by the said governor and company; and the amount of the composition payable as aforesaid shall be paid by the said governor and company out of their own funds; and in case any difference shall arise between any of such bankers and the Governor and Company of the Bank of England in respect of the composition payable as aforesaid, the same shall be determined by the chancellor of the exchequer for the time being, or by some person to be named by him, and the decision of the chancellor of the exchequer, or his nominee, shall be final and conclusive: provided always, that it shall be lawful for any banker named in the schedule hereto annexed marked (C.) (d) to discontinue the receipt of such composition as aforesaid, but no such banker shall by such discontinuance as aforesaid thereby acquire any right or title to issue bank notes.

24. That it shall be lawful for the said governor and company to agree with every banker who, under the provisions of this act, shall be entitled to issue bank notes, to allow to such banker a composition at the rate of one per centum per annum on the amount of Bank of England notes which shall be issued and kept in circulation by such banker, as a consideration for his relinquishment of the privilege of issuing his own bank notes; and all the provisions herein contained for ascertaining and determining the amount of composition payable to the several bankers named in the schedule hereto marked (C.) (d), shall apply to all such other bankers with whom the said governor and company are hereby authorized to agree as aforesaid; provided that the amount of composition payable to such bankers as last aforesaid shall in every case in which an increase of securities in the issue department shall have been authorized by any order in council be deducted out of the amount payable by the said governor and company to the public under the provisions herein contained: provided always, that the total sum payable to any banker, under the provisions herein contained, by way of composition as aforesaid, in any one year, shall not exceed, in case of the bankers

Bank of  
England to  
be allowed to  
compound  
with issuing  
banks.

Limitation of  
compositions.

(d) See note (c), ante, p. 630.

mentioned in the schedule hereto marked (C.) (a), one per centum on the several sums set against the names of such bankers respectively in the list and statement delivered to the commissioners of stamps as aforesaid, and in the case of other bankers shall not exceed one per centum on the amount of bank notes which such bankers respectively would otherwise be entitled to issue under the provisions herein contained.

Compositions  
to cease on  
1st August,  
1856.

25. That all the compositions payable to the several bankers mentioned in the schedule hereto marked (C.) (a), and such other bankers as shall agree with the said governor and company to discontinue the issue of their own bank notes as aforesaid, shall, if not previously determined by the act of such banker as hereinbefore provided, cease and determine on the 1st day of August, 1856, or on any earlier day on which parliament may prohibit the issue of bank notes (b).

Banks within  
65 miles of  
London may  
accept, &c.  
bills.

26. That from and after the passing of this act it shall be lawful for any society or company or any persons in partnership, though exceeding six in number, carrying on the business of banking in London, or within 65 miles thereof, to draw, accept or indorse bills of exchange, not being payable to bearer on demand, any thing in the hereinbefore recited act passed in the 4th year of the reign of his said Majesty King William the Fourth, or in any other act, to the contrary notwithstanding.

Bank to enjoy  
privileges,  
subject to re-  
demption.

27. That the said Governor and Company of the Bank of England shall have and enjoy such exclusive privilege of banking as is given by this act, upon such terms and conditions, and subject to the termination thereof at such time and in such manner as is by this act provided and specified; and all and every the powers and authorities, franchises, privileges and advantages, given or recognized by the said recited act passed in the 4th year of the reign of his Majesty King William the Fourth, as belonging to or enjoyed by the said Governor and Company of the Bank of England, or by any subsequent act or acts of parliament, shall be and the same are hereby declared to be in full force, and continued by this act, except so far as the same are altered by this act; subject nevertheless to redemption upon the terms and conditions following; (that is to say,) at any time upon twelve months' notice to be given after the 1st day of August, 1855, and upon repayment by parliament to the said governor and company or their successors of the sum of 11,015,100*l.*, being the debt now due from the public to the said governor and company,

(a) See note (c), ante, p. 630.

(b) By 19 Vict. c. 20, s. 1, sect. 25 was repealed, and right to compound continued; but by 38 & 39 Vict. c. 61, sect. 1 of 19 Vict. c. 20, has in its turn been repealed.

without any deduction, discount or abatement whatsoever, and upon payment to the said governor and company and their successors of all arrears of the sum of 100,000*l.* per annum, in the last-mentioned act mentioned, together with the interest or annuities payable upon the said debt or in respect thereof, and also upon repayment of all the principal and interest which shall be owing unto the said governor and company and their successors upon all such tallies, exchequer orders, exchequer bills or parliamentary funds which the said governor and company or their successors shall have remaining in their hands or be entitled to at the time of such notice to be given as last aforesaid, then and in such case, and not till then, the said exclusive privileges of banking granted by this act shall cease and determine at the expiration of such notice of twelve months; and any vote or resolution of the House of Commons, signified under the hand of the speaker of the said house in writing, and delivered at the public office of the said governor and company, shall be deemed and adjudged to be a sufficient notice.

28. That the term "bank notes" used in this act shall extend and apply to all bills or notes for the payment of money to the bearer on demand other than bills or notes of the Governor and Company of the Bank of England; and that the term "Bank of England notes" shall extend and apply to the promissory notes of the Governor and Company of the Bank of England payable to bearer on demand; and that the term "banker" shall extend and apply to all corporations, societies, partnerships and persons, and every individual person carrying on the business of banking, whether by the issue of bank notes or otherwise, except only the Governor and Company of the Bank of England; and that the word "person" used in this act shall include corporations; and that the singular number in this act shall include the plural number, and the plural number the singular, except where there is anything in the context repugnant to such construction; and that the masculine gender in this act shall include the feminine, except where there is anything in the context repugnant to such construction.

Interpretation clause.

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*Recovery and Application of Penalties under 7 & 8 Vict.  
c. 32.*

8 & 9 VICT. c. 76.

*An Act . . . . to amend an Act of the last Session of  
Parliament for regulating the Issue of Bank Notes in Eng-  
land.* [4th August, 1845.]

5. And whereas an act was passed in the last session of parliament, intituled "An Act to regulate the issue of bank Provision for recovery and application of

penalties  
under 7 & 8  
Vict. c. 32.

notes, and for giving to the Governor and Company of the Bank of England certain privileges for a limited period," and certain penalties are thereby imposed for offences against the provisions of the same act, and it is expedient to provide for the recovery and application of such penalties: be it enacted, that from and after the passing of this act all pecuniary penalties imposed by or incurred under the said last-recited act may be sued or prosecuted for and recovered, for the use of her Majesty, in the name of her Majesty's attorney-general or solicitor-general, or of any person authorized to sue or prosecute for the same by writing under the hands of the commissioners of stamps and taxes, or in the name of any officer of stamp duties, by action of debt, bill, plaint or information in the Court of Exchequer at Westminster, in such and the same manner as any penalties imposed by any of the laws now in force relating to the duties under the management of the said commissioners; and it shall be lawful in all cases for the said commissioners, either before or after any proceedings commenced for recovery of any such penalty, to mitigate or compound any such penalty as they shall think fit, and to stay any such proceedings after the same shall have been commenced, and whether judgment may have been obtained for such penalty or not, on payment of part only of any such penalty, with or without costs, or on payment only of the costs incurred in such proceedings, or of any part thereof, or on such terms as such commissioners shall judge reasonable: provided always, that in no such proceeding as aforesaid shall any essoign, protection, wager of law, or more than one imparlance, be allowed; and all pecuniary penalties imposed by or incurred under the said last-recited act, by whom or in whose name soever the same shall be sued or prosecuted for or recovered, shall go and be applied to the use of her Majesty, and shall be deemed to be and shall be accounted for as part of her Majesty's revenue arising from stamp duties, anything in any act contained, or any law or usage to the contrary, in anywise notwithstanding: provided always, that it shall be lawful for the said commissioners, at their discretion, to give all or any part of such penalties as rewards to any person or persons who shall have detected the offenders, or given information, which may have led to their prosecution and conviction.

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*Drafts on Bankers payable to Order on Demand.*

16 &amp; 17 VICT. c. 59.

*An Act to repeal certain Stamp Duties, and to grant others in lieu thereof; to amend the Laws relating to Stamp Duties, and to make perpetual certain Stamp Duties in Ireland (a).*

[4th August, 1853.]

19. Provided always, that any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any indorser thereof.

Drafts on bankers payable to order on demand sufficient authority for payment, without order or proof of indorsement.

*What deemed to be Bank Notes.*

17 &amp; 18 VICT. c. 83.

*An Act to amend the Laws relating to the Stamp Duties (b).*

[10th August, 1854.]

11. And whereas an act was passed in the 7th and 8th years of her Majesty's reign, chapter 32, to regulate the issue of bank notes; and an act was passed in the 8th and 9th years of her Majesty's reign, chapter 38, to regulate the issue of bank notes in Scotland; and another act was passed in the last-mentioned years, chapter 37, to regulate the issue of bank notes in Ireland; and in order to prevent evasions of the regulations and provisions of the said respective acts, it is expedient to define what shall be deemed to be bank notes within the meaning thereof respectively: be it enacted that all bills, drafts or notes (other than notes of the Bank of England), which shall be issued by any banker or the agent of any banker for the payment of money to the bearer on demand, and all bills, drafts or notes so issued which shall entitle or be intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorse-

What shall be deemed bank notes within the meanings of 7 & 8 Vict. c. 32, and 8 & 9 Vict. cc. 38, 37.

(a) This act is repealed by 33 & 34 Vict. c. 99, s. 2, except sects. 8, 19 and 20, and 20, so far as it continues or perpetuates any enactment thereby repealed in relation to Ireland.

(b) 33 & 34 Vict. c. 99, s. 2, repeals the whole of this act, except sects. 11 and 12, and sect. 20 having no relation to the subject of this work.

ment than may be thereon at the time of the issuing thereof, to the payment of any sum of money on demand, whether the same shall be so expressed or not, in whatever form and by whomsoever such bills, drafts or notes shall be drawn or made, shall be deemed to be bank notes of the banker by whom or by whose agent the same shall be issued within the meaning of the said three several acts last mentioned, and within all the clauses, provisions and regulations thereof respectively.

All bills,  
drafts and  
notes deemed  
bank notes  
under the  
above-recited  
acts liable to  
stamp duties,  
&c.

12. All bills, drafts and notes which by or under this act, or the said three several acts last mentioned, or any of them respectively, are declared or deemed to be bank notes, shall be subject and liable to the stamp duties and composition for stamp duties, imposed by or payable under any act or acts in force upon or in respect of promissory notes for the payment of money to the bearer on demand; and all clauses, provisions, regulations, penalties and forfeitures, contained in any act or acts relating to the issuing of such promissory notes, or for securing the said stamp duties and composition respectively, or for preventing or punishing frauds or evasions in relation thereto, shall be respectively deemed to apply to all such bills, drafts and notes as aforesaid, and to the stamp duties and composition payable upon or in respect thereof, anything in this act, or any other act or acts, to the contrary notwithstanding.

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*Composition still payable on discontinuance of Bank Note  
Issues.*

19 VICT. c. 20.

*An Act to continue certain Compositions payable to Bankers who  
have ceased to issue Bank Notes.* [5th June, 1856.]

7 & 8 Vict.  
c. 32.

WHEREAS under sections 23 and 24 of the act of the session holden in the 7th and 8th years of her Majesty, chapter 32, certain compositions are made payable by the Governor and Company of the Bank of England to bankers who have discontinued the issue of their own bank notes; and by section 25 of the said act it is provided that all such compositions shall, if not previously determined by the act of such banker as therein-before provided, cease and determine on the 1st day of August, 1856, or on any earlier day on which parliament may prohibit the issue of bank notes: and whereas it is expedient to provide for the further continuance of such compositions: be it enacted, &c. as follows:

Section 25 of  
the said act  
repealed.

1. Section 25 of the said act shall be repealed (a).

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(a) This section repealed by 38 & 39 Vict. c. 61, s. 1.

2. All the compositions payable under the said act, as amended by this act, to bankers who have discontinued, or who shall agree with the said governor and company to discontinue, the issue of their own bank notes, shall, if not previously determined by the act of such bankers as by the said act provided, and unless parliament shall otherwise provide, continue in force and be payable until parliament shall prohibit the issue of bank notes as defined by section 28 of the said recited act, or until the exclusive privileges of the said governor and company mentioned in section 27 of the said act shall be determined in pursuance of such section, or otherwise be determined or altered by authority of parliament.

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*Election of Directors of Joint Stock Banks.*

19 & 20 VICT. c. 100.

*An Act to amend the Law with respect to the Election of Directors of Joint Stock Banks in England.*

[29th July, 1856.]

WHEREAS by the act of the 7th and 8th years of the Queen, chapter 113, it is enacted that the deed of partnership of every banking company to be established under that act shall contain a specific provision for the retirement of at least one-fourth of the directors yearly, and for preventing the re-election of the retiring directors for at least twelve calendar months: and whereas it is expedient that so much of the said enactment as relates to the re-election of such retiring directors should be repealed: be it therefore enacted, &c. as follows; that is to say,

1. It shall not be necessary in the deed of partnership of any banking company established after the passing of this act to insert any provision for preventing the re-election of retiring directors, either absolutely or for any limited period.

2. In every banking company already established under the provisions of the said recited act, and whose deed of partnership or settlement contains a provision in accordance with the enactment hereinbefore repealed, the directors retiring at any general meeting after the passing of this act shall and may, if duly qualified in other respects, be immediately eligible for re-election, anything in the deed of partnership of such company contained to the contrary notwithstanding.

7 & 8 Vict.  
c. 113.

Retiring directors in banking companies eligible for re-election.

Provision for existing banking companies established under recited act.

*Validity of Cheques or Drafts for less than 20s.*

23 &amp; 24 VICT. c. 111.

*An Act for granting to her Majesty certain Duties on Stamps, and to amend the Laws relating to the Stamp Duties.*

[28th August, 1860.]

Drafts on  
bankers for  
less than 20s.  
to be lawful.

19. Provided always, that, notwithstanding anything in any act of parliament contained to the contrary, it shall be lawful for any person to draw upon his banker, who shall bonâ fide hold money to or for his use, any draft or order for the payment to the bearer or to order on demand, of any sum of money less than 20s.

*Form of Licences to Joint Stock Banks.*

24 &amp; 25 VICT. c. 91, s. 35.

*An Act to amend the Laws relating to the Inland Revenue (a).*

[6th August, 1861.]

Licences to  
joint stock  
banks not  
required to  
specify the  
names of  
more than  
six persons.

35. Whereas the licences and certificates granted to bankers, and persons acting as bankers, in Great Britain and Ireland respectively, by or under the authority of the commissioners of inland revenue, are required by law to specify, among other things, the names and places of abode of all persons composing the respective companies or partnerships to whom they are granted: be it enacted, that in any case where a company or copartnership of bankers consists of more than six persons, it shall be sufficient to specify in any such licence or certificate the names or places of abode of any six or more of such persons who may be presented to the commissioners or their officer, or whom they or he may select for the purpose, and to grant the licence or certificate to them as and for the whole of the company or copartnership, or otherwise to specify only the name or style of the company or copartnership, and to grant the licence or certificate to such company or copartnership in and by the said name or style as the commissioners or their officer shall think fit; and every such licence and certificate respectively shall be as good, valid and available as if the names or places of abode of all the members of the company or copartnership had been specified therein, and the licence had been granted to them, anything in any act of parliament to the contrary notwithstanding; but this shall not in any way alter or affect the provisions of any act of parliament whereby any banking company or copartnership is required to

(a) Remaining unrepealed by the Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 99).

make any account or return of the names and places of abode of all the members or partners of such company or copartnership, and any other particulars relating thereto.

*The Companies Act, 1862, so far as applicable to Banks.*

25 & 26 VICT. c. 89.

*An Act for the Incorporation, Regulation and Winding-up of Trading Companies and their Associations.*

[7th August, 1862.]

1. This act may be cited for all purposes as "The Companies Act, 1862." Short title.

2. This act . . . shall not come into operation until the 2nd day of November, 1862, and the time at which it so comes into operation is referred to as the commencement of this act. Commencement of act.

4. No company, association or partnership consisting of more than 10 persons shall be formed, after the commencement of this act, for the purpose of carrying on the business of banking, unless it is registered as a company under this act, or is formed in pursuance of some other act of parliament, or of letters-patent. Prohibition of partnerships exceeding certain number.

44. Every limited banking company . . . shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked (D.) in the first schedule hereto (*a*), or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the com- Certain companies to publish statement entered in schedule.

(*a*) Form (D.) is as follows:—

The capital of the company is . . . divided into . . . shares of . . . each.

The number of shares issued is . . .

Calls to the amount of . . . pounds per share have been made, under which the sum of . . . pounds has been received.

The liabilities of the company on the first day of January (or July) were—

Debts owing to sundry persons by the company:—

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the company on that day were:—

Government securities [*stating them*], £

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

pany, and in every branch office or place where the business of the company is carried on; and if default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding 5*l.* for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty. Every member, and every creditor of the company shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding 6*d.*

Repeal of  
acts.

**205.** After the commencement of this act there shall be repealed the several acts specified in the first part of the third schedule hereto, with this qualification, that so much of the said acts as is set forth in the second part of the said third schedule shall be hereby re-enacted and continued in force as if unrepealed.

### THIRD SCHEDULE.

#### FIRST PART.

- 7 & 8 Vict. c. 113 . . An Act to regulate Joint Stock Banks in England.  
 9 & 10 Vict. c. 75 . . An Act to regulate Joint Stock Banks in Scotland and Ireland.  
 20 & 21 Vict. c. 49 . . An Act to amend the Law relating to Banking Companies.  
 21 & 22 Vict. c. 60 . . An Act to amend the Joint Stock Banking Companies Act, 1857.  
 21 & 22 Vict. c. 91 . . An Act to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability.

#### SECOND PART.

7 & 8 Vict. c. 113, s. 47.

Existing  
banking com-  
panies to  
have the  
power of  
suing and  
being sued.

Every company of more than six persons established on the 6th day of May, 1844, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the act passed in the session holden in the 7th and 8th years of the reign of her present Majesty, chapter 113, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner, or defendant on behalf of such copartnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London, under the provisions of an act passed in the 7th year of the reign of Geo. 4, c. 46, intituled "An Act for the better regulating copartnerships of certain bankers in England, and for amending so much of an act of the 39 & 40 Geo. 3, intituled 'An Act for

establishing an agreement with the Governor and Company of the Bank of England for advancing the sum of three millions towards the supply for the service of the year 1800,' as relates to the same," provided that such first-mentioned company shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last-mentioned act, and all the provisions of the last-recited act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited act.

20 & 21 Vict. c. 49, Part of Section XII.

Notwithstanding anything contained in any act passed in the session holden in the 7th and 8th years of the reign of her present Majesty, chapter 113, and intituled "An Act to regulate joint stock banks in England," or in any other act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this act have carried on such business.

Power to form banking copartnerships of ten persons.

*Banking Copartnerships suing and sued by Public Officer.*

27 & 28 VICT. c. 32.

*An Act to enable certain Banking Copartnerships which shall discontinue the issue of their own Bank Notes to sue and be sued by their Public Officer.* [30th June, 1864.]

WHEREAS by the 7 Geo. 4, c. 46, banking copartnerships, registered and carrying on business under that act, and entitled to issue their own bank notes under the 7 & 8 Vict. c. 32, have certain powers and privileges of suing and being sued in the name of any one of their public officers, so long as such copartnerships carry on business under the provisions of the first-recited act: and whereas by the secondly-recited act such copartnerships are empowered to agree with the Governor and Company of the Bank of England to discontinue the issue of bank notes, and it is thereby enacted, that if any such banking copartnerships shall discontinue the issue of bank notes, either by agreement with the Governor and Company of the Bank of England or otherwise, it shall not be lawful for such copartnerships at any time thereafter to issue such notes: and whereas doubts are entertained whether the powers and privileges so given by the first-recited act will extend to such of the said banking copartnerships as shall discontinue the issue of bank notes, and shall afterwards commence and carry on the trade or business of bankers in London, or within 65 miles from London, in such manner as they will then by law be authorized to do, and it is expedient that such

7 Geo. 4, c. 46.  
7 & 8 Vict. c. 32.

Section 24.

Section 12.

doubts be removed: be it therefore declared and enacted as follows:

Banks discontinuing the issue of bank notes empowered to sue and be sued by their public officer.

1. From and after the passing of this act, every banking copartnership registered and carrying on business under the first-recited act, and entitled to issue their own bank notes under the secondly-recited act, which shall discontinue the issue of such bank notes, and shall afterwards commence and carry on the trade or business of bankers in London, or within 65 miles from London, in such manner as they shall be authorized to do, shall have the same powers and privileges of suing and being sued in the name of one of their public officers of such copartnership, as the nominal plaintiff, petitioner, or defendant, on behalf of such copartnership: and all judgments, decrees and orders made and obtained in any such suit may be enforced in like manner as is provided by the first-recited act with respect to copartnerships carrying on business under the provisions of that act: provided that nothing in this act contained shall empower any copartnership to carry on the trade or business of bankers in London, or within 65 miles therefrom, in any case where by the existing law they are not authorized so to do.

And not to empower any bank to carry on business in London.

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*Sale and Purchase of Shares in Joint Stock Banking Companies.*

30 VICT. c. 29.

*An Act to amend the Law in respect of the Sale and Purchase of Shares in Joint Stock Banking Companies.*

[17th June, 1867.]

WHEREAS it is expedient to make provision for the prevention of contracts for the sale and purchase of shares and stock in joint stock banking companies of which the sellers are not possessed or over which they have no control: be it enacted, &c.

Contracts for sale, &c. of shares to be void unless the numbers by which such shares are distinguished are set forth in contract.

1. That all contracts, agreements, and tokens of sale and purchase which shall, from and after the 1st day of July, 1867, be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares, or of any stock or other interest, in any joint stock banking company in the United Kingdom of Great Britain and Ireland constituted under or regulated by the provisions of any act of parliament, royal charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever, unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the

respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company as aforesaid, or where there is no such register of shares or stock by distinguishing numbers, then, unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company; and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand as aforesaid, shall be guilty of a misdemeanour, and be punished accordingly, and, if in Scotland, shall be guilty of an offence punishable by fine or imprisonment.

2. Joint stock banking companies shall be bound to show their list of shareholders to any registered shareholder during business hours, from ten of the clock to four of the clock.

Registered shareholders may see lists.

3. This act shall not extend to shares or stock in the Bank of England or the Bank of Ireland.

Extent of act limited.

### *Stamp Duties on Bills, Notes, Cheques, Protests and Receipts, and the Cancellation of Adhesive Stamps.*

33 & 34 VICT. c. 97.

*An Act for granting certain Stamp Duties in lieu of Duties of the same kind now payable under various Acts, and consolidating and amending Provisions relating thereto.*

[10th August, 1870.]

1. This act may be cited as "The Stamp Act, 1870," and shall come into operation on the 1st day of January, 1871, which date is hereinafter referred to as the commencement of this act.

Short title, and commencement of act.

6. (1.) All stamp duties which may from time to time be chargeable by law upon any instruments are to be paid and denoted according to the general and special regulations in this act contained.

All duties to be paid according to the regulations of this act, and the schedule to be read as part of this act.

(2.) The said schedule, and everything therein contained, is to be read and construed as part of this act.

15. (1.) Except where express provision to the contrary is made by this or any other act, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of 10%, and also by way of further penalty, where the unpaid duty

Terms upon which instruments may be stamped after execution.

exceeds 10*l.*, of interest on such duty, at the rate of 5*l.* per centum per annum, from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty.

And the payment of any penalty or penalties is to be denoted on the instrument by a particular stamp.

Proviso.

(2.) Provided as follows :

As to instruments executed abroad.

(a.) Any unstamped or insufficiently stamped instrument, which has been at first executed at any place out of the United Kingdom, may be stamped, at any time within two months after it has been first received in the United Kingdom, on payment of the unpaid duty only.

As to the remission of penalties.

(b.) The commissioners may, if they think fit, at any time within 12 months after the first execution of any instrument, remit the penalty or penalties, or any part thereof.

Terms upon which unstamped or insufficiently stamped instruments may be received in evidence in any court.

16. (1.) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom, the officer whose duty it is to read the instrument shall call the attention of the judge to any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the amount of the unpaid duty, and the penalty payable by law on stamping the same as aforesaid, and of a further sum of 1*l.*, be received in evidence, saving all just exceptions on other grounds.

Instrument not duly stamped inadmissible.

17. Save and except as aforesaid, no instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity, unless it is duly stamped in accordance with the law in force at the time when it was first executed.

How duties to be denoted.

23. Except where express provision is made to the contrary, all duties are to be denoted by impressed stamps only.

General direction as to the cancellation of adhesive stamps.

24. (1.) An instrument, the duty upon which is required, or permitted by law, to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp *unless the person required by law to cancel such adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, so that the stamp may be effectually cancelled and rendered incapable of being used for any other instrument, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.*

(2.) Every person who, being required by law to cancel an adhesive stamp, wilfully neglects or refuses duly and effectually to do so in manner aforesaid, shall forfeit the sum of 10*l*. Penalty for neglect or refusal, 10*l*.

**25. Any person who—**

(1.) Fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes any adhesive stamp which has been so removed to any other instrument with intent that such stamp may be used again; Penalty for frauds in relation to adhesive stamps, or to any duty, 50*l*.

(2.) Sells or offers for sale, or utters, any adhesive stamp which has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid;

(3.) Practises or is concerned in any fraudulent act, contrivance, or device not specially provided for, with intent to defraud her Majesty, her heirs or successors of any duty,

shall forfeit, over and above any other penalty to which he may be liable, the sum of 50*l*.

[An authorized defacement of adhesive stamps subjects a person to a penalty of 5*l*. By the Stamp Duties Management Act, 1870 (33 & 34 Vict. c. 98), s. 25, every person who by any writing in any manner defaces any adhesive stamp *before it is used* shall forfeit the sum of 5*l*.: provided that any person may, with the express sanction of the commissioners, and in the manner and in conformity with the conditions which they may prescribe, write upon an adhesive stamp before it is used for the purpose of identification thereof.] As to defacement of adhesive stamps.

**BANK NOTE—**

		£	s.	d.
For money not exceeding 1 <i>l</i> .		0	0	5
Exceeding 1 <i>l</i> . and not exceeding 2 <i>l</i> .		0	0	10
„ 2 <i>l</i> .	5 <i>l</i> .	0	1	3
„ 5 <i>l</i> .	10 <i>l</i> .	0	1	9
„ 10 <i>l</i> .	20 <i>l</i> .	0	2	0
„ 20 <i>l</i> .	30 <i>l</i> .	0	3	0
„ 30 <i>l</i> .	50 <i>l</i> .	0	5	0
„ 50 <i>l</i> .	100 <i>l</i> .	0	8	6

And see sections 45, 46, and 47.

**45.** The term “banker” means and includes any corporation, society, partnership, and persons, and every individual person carrying on the business of banking in the United Kingdom.

The term “bank note” means and includes—

(1.) Any bill of exchange or promissory note issued by any banker, other than the Governor and Company of the Bank of England, for the payment of money not exceeding 100*l*. to the bearer on demand:

(2.) Any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding 100*l.* on demand, whether the same be so expressed or not, and in whatever form, and by whomsoever such bill or note is drawn or made.

46. A bank note issued duly stamped, or issued unstamped by a banker duly licensed or otherwise authorized to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of such re-issuing.

47. (1.) If any banker, not being duly licensed or otherwise authorized to issue unstamped bank notes, issues, or causes or permits to be issued, any bank note not being duly stamped, he shall forfeit the sum of 50*l.*

(2.) If any person receives or takes any such bank note in payment or as a security, knowing the same to have been issued unstamped contrary to law, he shall forfeit the sum of 20*l.*

BILL OF EXCHANGE—	£	s.	d.
Payable on demand . . . . .	0	0	1

BILL OF EXCHANGE of any other kind whatsoever (*except a bank note*) and PROMISSORY NOTE of any kind whatsoever (*except a bank note*)—drawn, or expressed to be payable, or actually paid, or indorsed, or in any manner negotiated in the United Kingdom :

Where the amount or value of the money for which the bill or note is drawn or made does not exceed 5 <i>l.</i> . . . . .				0	0	1
Exceeds 5 <i>l.</i> and does not exceed 10 <i>l.</i> . . . . .				0	0	2
„ 10 <i>l.</i> . . . . .	„	25 <i>l.</i> . . . . .		0	0	3
„ 25 <i>l.</i> . . . . .	„	50 <i>l.</i> . . . . .		0	0	6
„ 50 <i>l.</i> . . . . .	„	75 <i>l.</i> . . . . .		0	0	9
„ 75 <i>l.</i> . . . . .	„	100 <i>l.</i> . . . . .		0	1	0
„ 100 <i>l.</i> . . . . .						
for every 100 <i>l.</i> , and also for any fractional part of 100 <i>l.</i> , of such amount or value . . . . .				0	1	0

*Exemptions.*

- (1.) Bill or note issued by the Governor and Company of the Bank of England or Bank of Ireland.
- (2.) Draft or order drawn by any banker in the United Kingdom upon any other banker in the United

Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.

- (3.) Letter written by a banker in the United Kingdom to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf.
- (4.) Letter of credit granted in the United Kingdom authorizing drafts to be drawn out of the United Kingdom payable in the United Kingdom.
- (5.) Draft or order drawn by the accountant-general of the Court of Chancery in England (now her Majesty's paymaster-general by the Chancery Funds Act, 35 & 36 Vict. c. 44) or Ireland.
- (6.) Warrant or order for the payment of any annuity granted by the commissioners for the reduction of the national debt, or for the payment of any dividend or interest in any shares in the government or parliamentary stocks or funds.
- (7.) Bill drawn by the lords commissioners, or by any person under the authority of any act of parliament upon and payable by the accountant-general of the navy (*a*).
- (8.) Bill drawn (according to a form prescribed by her Majesty's orders by any person duly authorized to draw the same) upon and payable out of any public account for any pay or allowance of the army or other expenditure connected therewith.
- (9.) Coupon or warrant for interest attached to and issued with any security.

48. (1.) The term "bill of exchange" for the purpose of this act includes draft, order, cheque and letter of credit, and any document or writing (except a bank note), entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned.

Interpretation of term "bill of exchange."

(2.) An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of

Order for payment, bill or note, &c., or out of a particular fund, or on condition or contingency.

(*a*) This exemption is repealed by 35 & 36 Vict. c. 20, s. 7.

this act a bill of exchange for the payment of money on demand.

Order for payment at stated periods, or after date, upon third parties.

(3.) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also any order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf, is to be deemed for the purposes of this act a bill of exchange for the payment of money on demand.

Interpretation of term "promissory note."

49. (1.) The term "promissory note" means and includes any document or writing (except a bank note) containing a promise to pay any sum of money.

Promissory note payable out of any particular fund, or upon any condition or contingency.

(2.) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of this act a promissory note for the said sum of money.

The fixed duty may be denoted by an adhesive stamp.

50. The fixed duty of one penny on a bill of exchange for the payment of money on demand may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power.

The ad valorem duties to be denoted in certain cases by adhesive stamps.

51. (1.) The ad valorem duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom are to be denoted by adhesive stamps.

(2.) Every person into whose hands any such bill or note comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates, or pays such bill or note, affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto.

Provisoos for the protection of bonâ fide holders.

(3.) Provided as follows :

(a.) If at the time when any such bill or note comes into the hands of any bonâ fide holder thereof there is affixed thereto an adhesive stamp effectually obliterated, and purporting and appearing to be duly cancelled, such stamp shall, so far as relates to such holder, be deemed to be duly cancelled, although it may not appear to have been so affixed or cancelled by the proper person.

(b.) If at the time when any such bill or note comes into the hands of any bonâ fide holder thereof there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for such holder to cancel such stamp as if he were the person by whom it was affixed, and upon his so doing such bill or note shall

be deemed duly stamped, and as valid and available as if the stamp had been duly cancelled by the person by whom it was affixed.

(4.) But neither of the foregoing provisoes is to relieve any person from any penalty incurred by him for not cancelling any adhesive stamp. Not to relieve any other person.

52. A bill of exchange or promissory note purporting to be drawn or made out of the United Kingdom is, for the purposes of this act, to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom. Bills and notes purporting to be drawn or made abroad to be deemed to have been so drawn or made.

53. (1) Where a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount but of improper denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of 40s. if the bill or note be not then payable according to its tenor, and of 10*l.* if the same be so payable.

(2.) Except as aforesaid no bill of exchange or promissory note shall be stamped with an impressed stamp after the execution thereof.

54. (1) Every person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall forfeit the sum of 10*l.*, and the person who takes or receives from any other person any such bill or note not being duly stamped either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever. Penalty for issuing, &c. any unstamped bill or note, 10*l.*, and the bill or note to be unavailable.

(2.) Provided that if any bill of exchange for the payment of money on demand, liable only to the duty of one penny, is presented for payment unstamped, the person to whom it is so presented may affix thereto a proper adhesive stamp, and cancel the same, as if he had been the drawer of the bill, and may, upon so doing, pay the sum in the said bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct such duty from the said sum, and such bill is, so far as respects the duty, to be deemed good and valid. Proviso as to the fixed duty.

(3.) But the foregoing proviso is not to relieve any person from any penalty he may have incurred in relation to such bill. Not to relieve from penalty.

55. When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from such duly stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from such lost or destroyed bill may, although One bill only out of a set need be stamped.

unstamped, be admitted in evidence to prove the contents of such lost or destroyed bill.

PROMISSORY NOTE. See *Bank Note, Bill of Exchange*, and section 49, ante, p. 648.

Protest of any bill of exchange or promissory note :

Where the duty on the bill or note does not exceed 1s. ....	{	£ s. d. The same duty as the bill or note.		
In any other case .....		0	1	0

Duty may be denoted by an adhesive stamp.

116. The duty upon a notarial act, and upon the protest by a notary public, of a bill of exchange or promissory note, may be denoted by an adhesive stamp, which is to be cancelled by the notary.

RECEIPT given for, or upon the payment of, £ s. d.  
money amounting to 2*l.* or upwards ..... 0 0 1

Interpretation of term "receipt."

120. The term "receipt" means and includes any note, memorandum, or writing whatsoever whereby any money amounting to 2*l.* or upwards :

Or any bill of exchange or promissory note for money amounting to 2*l.* or upwards :

Is acknowledged or expressed to have been received or deposited or paid :

Or whereby any debt or demand, or any part of a debt or demand, of the amount of 2*l.* or upwards, is acknowledged to have been settled, satisfied or discharged :

Or which signifies or imports any such acknowledgment :

And whether the same is or is not signed with the name of any person.

*Exemptions.*

- (1.) Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for.
- (2.) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.
- (3.) Receipt given for or upon the payment of any parliamentary taxes, or duties, or of money to or for the use of her Majesty.
- (4.) Receipt given by the accountant-general of the navy for any money received by him for the service of the navy.
- (5.) Receipt given by any agent for money imprested to him on account of the pay of the army.
- (6.) Receipt given by an officer, seaman, marine or soldier, or his representatives, for or on account of any wages, pay or pension, due from the Admiralty or Army Pay Office.

- (7.) Receipt given for the consideration money for the purchase of any share in any of the government or parliamentary stocks or funds, or in stock of the East India Company, or in the stocks and funds of the Secretary of State in Council of India, or of the Governor and Company of the Bank of England, or of the Bank of Ireland, or for any dividend paid on any share of the said stock or funds respectively.
- (8.) Receipt given for any principal money or interest due on an exchequer bill.
- (9.) Receipt written upon a bill of exchange or promissory note duly stamped.
- (10.) Receipt given upon any bill or note of the Governor and Company of the Bank of England or the Bank of Ireland.
- (11.) Receipt indorsed or otherwise written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity thereby secured or therein mentioned.
- (12.) Receipt given for drawback or bounty upon the exportation of any goods or merchandize from the United Kingdom.
- (13.) Receipt given for the return of any duties of customs upon certificates of over entry.
- (14.) Receipt indorsed upon any bill drawn by the Lords Commissioners of the Admiralty, or by any person under their authority, or under the authority of any act of parliament upon and payable by the accountant-general of the navy.

121. The duty upon a receipt may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the receipt is given before he delivers it out of his hands.

Duty may be denoted by an adhesive stamp.

122. A receipt given without being stamped may be stamped with an impressed stamp upon the terms following; that is to say,

- (1.) Within 14 days after it has been given, on payment of the duty and a penalty of 5*l.*;
- (2.) After 14 days, but within one month (*a*), after it has been given, on payment of the duty and a penalty of 10*l.*;

and shall not in any other case be stamped with an impressed stamp.

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(*a*) By 13 & 14 Vict. c. 21, s. 4, this will be a calendar month.

123. If any person—

- (1.) Gives any receipt liable to duty and not duly stamped;
- (2.) In any case where a receipt would be liable to duty refuses to give a receipt duly stamped;
- (3.) Upon a payment to the amount of 2*l.* or upwards gives a receipt for a sum not amounting to 2*l.*, or separates or divides the amount paid with intent to evade the duty:

he shall forfeit the sum of 10*l.*

### *Bank Holidays.*

34 VICT. c. 17.

*An Act to make Provision for Bank Holidays, and respecting Obligations to make Payments and do other Acts on such Bank Holidays.* [25th May, 1871.]

WHEREAS it is expedient to make provision for rendering the day after Christmas Day, and also certain other days, bank holidays, and for enabling bank holidays to be appointed by royal proclamation:

Be it enacted, &c. as follows:

Bills due on bank holidays to be payable on the following day.

1. After the passing of this act, the several days in the schedule to this act mentioned (*a*) (and which days are in this act hereinafter referred to as bank holidays) shall be kept as close holidays in all banks in England and Ireland and Scotland respectively, and all bills of exchange and promissory notes which are due and payable on any such bank holiday shall be payable, and in case of non-payment may be noted and protested, on the next following day, and not on such bank holiday; and any such noting or protest shall be as valid as if made on the day on which the bill or note was made due

#### (*a*) SCHEDULE.

##### *Bank Holidays in England and Ireland.*

Easter Monday.

The Monday in Whitsun week.

The first Monday in August.

The 26th day of December, if a week day.

##### *Bank Holidays in Scotland.*

New Year's Day.

Christmas Day.

If either of the above days falls on a Sunday the next following Monday shall be a bank holiday.

Good Friday.

The first Monday of May.

The first Monday of August.

and payable; and for all the purposes of this act the day next following a bank holiday shall mean the next following day on which a bill of exchange may be lawfully noted or protested.

2. When the day on which any notice of dishonour of an unpaid bill of exchange or promissory note should be given, or when the day on which a bill of exchange or promissory note should be presented or received for acceptance, or accepted or forwarded to any referee or referees, is a bank holiday, such notice of dishonour shall be given and such bill of exchange or promissory note shall be presented or forwarded on the day next following such bank holiday.

Provision as to notice of dishonour and presentation for honour.

3. No person shall be compellable to make any payment or to do any act upon such bank holidays which he would not be compellable to do or make on Christmas Day or Good Friday; and the obligation to make such payment and do such act shall apply to the day following such bank holiday; and the making of such payment and doing such act on such following day shall be equivalent to payment of the money or performance of the act on the holiday.

As to any payments on bank holidays.

4. It shall be lawful for her Majesty, from time to time, as to her Majesty may seem fit, by proclamation, in the manner in which solemn fasts or days of public thanksgiving may be appointed, to appoint a special day to be observed as a bank holiday, either throughout the United Kingdom or in any part thereof, or in any county, city, borough or district therein, and any day so appointed shall be kept as a close holiday in all banks within the locality mentioned in such proclamation, and shall, as regards bills of exchange and promissory notes payable in such locality, be deemed to be a bank holiday for all the purposes of this act.

Appointment of special bank holidays by royal proclamation.

5. It shall be lawful for her Majesty in like manner, from time to time, when it is made to appear to her Majesty in council in any special case that in any year it is inexpedient that a day by this act appointed for a bank holiday should be a bank holiday, to declare that such day shall not in such year be a bank holiday, and to appoint such other day as to her Majesty in council may seem fit to be a bank holiday instead of such day, and thereupon the day so appointed shall in such year be substituted for the day so appointed by this act (a).

Day appointed for bank holiday may be altered by order in council.

6. The powers conferred by section 3 and 4 of this act on her Majesty may be exercised in Ireland, so far as relates to that

Exercise of powers conferred by sec-

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(a) The exercise of the powers conferred by sects. 4 and 5 will render unnecessary the passing of a special act of parliament, as in the case of the public funeral of the Duke of Wellington (16 & 17 Vict. c. 1), and on the occasion of the entry of the Princess Alexandrina of Denmark into London (26 & 27 Vict. c. 2).

tions 4 and 5  
in Ireland by  
lord lieu-  
tenant (a).  
Short title.

part of the united Kingdom, by the Lord Lieutenant of Ireland in Council (b).

7. This act may be cited for all purposes as "The Bank Holidays Act, 1871."

*Payment of Bills and Notes payable at Sight and Stamp Duty.*

34 & 35 VICT. c. 74.

*An Act to abolish Days of Grace in the case of Bills of Exchange and Promissory Notes payable at Sight or on Presentation.*

[14th August, 1871.]

WHEREAS doubts have arisen whether by the custom of merchants a bill of exchange or promissory note purporting to be payable at sight or on presentation is payable until the expiration of a certain number of "days of grace:"

And whereas it is expedient that such bills of exchange and promissory notes should bear the same stamp and should be payable in the same manner as bills of exchange and promissory notes purporting to be payable on demand:

Be it enacted, &c. as follows:

Short title.

1. This act may be cited as "The Bills of Exchange Act, 1871."

Bills payable  
at sight or on  
presentation  
to be payable  
on demand.

2. Every bill of exchange or promissory note, drawn after this act comes into operation and purporting to be payable at sight or on presentation, shall bear the same stamp and shall, for all purposes whatsoever, be deemed to be a bill of exchange or promissory note payable on demand, any law or custom to the contrary notwithstanding.

Definition of  
terms.

3. For the purposes of this act, the terms "bill of exchange" and "promissory note" shall have the same meanings as are given to them in "The Stamp Act, 1870."

Admissibility  
in evidence of  
past bills.

4. A bill of exchange purporting to be payable at sight and drawn at any time between the 1st day of January, 1871, and the day of the passing of this act, both inclusive, and stamped as a bill of exchange payable on demand, shall be admissible in evidence on payment of the difference between the amount of stamp duty paid on such bill and the amount which would have been payable if this act had not passed.

39 & 40 VICT. c. 81.

*An Act for amending the Law relating to Crossed Cheques.*

[ See p. 68.]

(a) See note (a), *ante*.

(b) For 3 and 4 read 4 and 5 (38 Vict. c. 13, s. 3).

*Treasury and Exchequer Bills.*

40 VICT. c. 2.

*An Act to provide for the Preparation, Issue, and Payment of Treasury Bills, and make further Provision respecting Exchequer Bills.* [16th March, 1877.]

WHEREAS it is expedient to provide for the issue of Treasury bills in cases where the issue of exchequer bills by the treasury is authorized :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

1. This act may be cited as the Treasury Bills Act, 1877. Short titles.

The act of the session of the twenty-ninth and thirtieth years of the reign of her present Majesty, chapter twenty-five, intituled "An Act to consolidate and amend the several laws for regulating the preparation, issue, and payment of exchequer bills and bonds," is in this act referred to and may be cited as the Exchequer Bills and Bonds Act, 1866, and that act and this act may be cited together as the Exchequer and Treasury Bills Acts, 1866 and 1877.

2. In this Act,— Definitions.

The expression "Treasury" means the Commissioners of Her Majesty's Treasury.

The expression "Bank of England" means the Governor and Company of the Bank of England.

The expression "Comptroller and Auditor General of the receipt and issue of Her Majesty's Exchequer" includes, in case of the illness or absence of the comptroller, the assistant comptroller and auditor.

The expression "financial year" means the twelve months beginning on the first day of April and ending on the following thirty-first day of March.

The expression "prescribed" means prescribed by regulations made under this act.

3. Where the Treasury have authority under any act of parliament (passed either before or after the passing of this act) to raise money by the issue of exchequer bills or of treasury bills, the treasury may, if they think fit, raise such money or any part thereof by the issue of bills under this act. Raising of money by issue of treasury bills.

4. A bill under this act (referred to in this act as a treasury bill) shall be a bill in the prescribed form, for the payment of the principal sum named therein in the manner and at the date therein mentioned, so that the date be not more than twelve months from the date of the bill. Form and length of currency of and interest on treasury bills.

Payment of proceeds of treasury bill into exchequer, and charge of bill on consolidated fund.

Power to issue exchequer bills or treasury bills in lieu of bills paid off during same financial year.

Application of 38 & 39 Vict. c. 45, ss. 3, 5, to treasury bills.

Mode of issue of treasury bills.

Regulations by treasury as to preparation, issue,

Interest shall be payable in respect of a treasury bill at such rate and in such manner as the treasury direct.

5. All money raised by the issue of any treasury bill shall be paid into the exchequer.

The principal money of and interest on any treasury bill shall be charged on and payable out of the consolidated fund of the United Kingdom, or the growing produce thereof, at the time and in the manner prescribed.

6. Where in any financial year any exchequer bills or treasury bills are or are about to be paid off, the treasury may, during that financial year, for the purpose of paying off, or of replacing the amount expended (otherwise than out of the new sinking fund) in paying off the principal money of such bills, or of any of them, raise a sum not exceeding the amount of such principal money by the issue of treasury bills or of exchequer bills, or partly of treasury bills and partly of exchequer bills, according as they think most beneficial for the public service.

Where in any financial year any exchequer bills are paid in for duties the treasury may during that financial year for the purpose of replacing the principal money of such bills, or any of them, raise a sum not exceeding the amount of such principal money by the issue of treasury bills or of exchequer bills, or partly of treasury bills and partly of exchequer bills, according as they think most beneficial for the public service.

This section shall apply in the case of exchequer bills issued before as well as of those issued after the passing of this act.

Section twelve of the Exchequer bills and Bonds Acts, 1866, is hereby repealed, without prejudice to anything previously done under that section.

7. Sections three and five of the Sinking Fund Act, 1875, which relate to the application of the old and new sinking funds, shall apply to treasury bills in like manner as if they were exchequer bills.

8. With respect to the issue of treasury bills the following provisions shall have effect :

- (1.) Treasury bills shall be issued by the bank of England under the authority of a warrant from the treasury, countersigned by the comptroller and auditor general of the receipt and issue of her Majesty's exchequer ;
- (2.) Each treasury bill shall be for the amount directed by the treasury ;
- (3.) Each treasury bill shall be signed by the said comptroller and auditor general in his own name.

9. The treasury may from time to time make, and when made rescind, alter, and add to, regulations for carrying into effect this act, and in particular—

- (1.) For regulating (subject to the provisions of this act) the preparation, form, mode of issue, mode of payment, and cancellation of treasury bills; and cancellation of and prevention of fraud as to Treasury bills.
- (2.) For regulating the issue of a new bill in lieu of one defaced, lost, or destroyed; and
- (3.) For preventing, by the use of counterfoils or of a special description of paper or otherwise, fraud in relation to treasury bills; and
- (4.) For the proper discharge to be given upon the payment of a treasury bill.

Every regulation under this act shall be laid before both houses of parliament within one month after it is made, if parliament be then sitting, or if not, within one month after the then next meeting of parliament.

Every regulation purporting to be made in pursuance of this section shall be deemed to be within the powers of this act, and shall have effect as if it were enacted in this act.

10. Sections eight, nine, ten, and eleven of the act of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-eight, intituled "An act to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery," (which sections relate to the forgery of and other frauds relating to exchequer bills,) shall apply to treasury bills, and shall have effect as if "exchequer bill" in those sections included "treasury bill." Application to Treasury bills of 24 & 25 Vict. c. 98, ss. 8—11, relating to forgery and other frauds.

11. There shall be paid to the Bank of England out of the consolidated fund of the United Kingdom, or out of the growing produce thereof, for the management of the unredeemed public debt in treasury bills for the year commencing on the first day of December one thousand eight hundred and seventy-seven, an allowance at the rate of one hundred pounds for every million of treasury bills outstanding on that day, and such payment shall be made on the first day of December one thousand eight hundred and seventy-eight, and the allowance for the management of treasury bills shall be computed and paid in like manner in every succeeding year until parliament otherwise direct. Payment to Bank of England for management and expenses.

The treasury shall also on the application of the Bank of England reimburse out of the consolidated fund, or the growing produce thereof, any expenses incurred by the Bank of England for paper and printing in respect of the issue of treasury bills.

12. Where any act passed before the passing of this act authorizes the raising of money by exchequer bills, and the interest on such exchequer bills is in pursuance of the directions of that act, or of the Sinking Fund Act, 1875, payable out of the permanent annual charge for the national debt, Application of 38 & 39 Vict. c. 45, to interest on and allowance for

management  
of treasury  
bills.

the interest on treasury bills issued to raise the said money shall be paid out of the said permanent annual charge.

The allowance and expenses paid to the Bank of England in pursuance of this act shall be deemed to be part of the annual sums payable for the management of the national debt within the meaning of the Sinking Fund Act, 1875, and shall be paid accordingly out of the permanent annual charge for the national debt.

Bank of  
England may  
lend on credit  
of treasury  
bills.

13. The Bank of England may lend to her Majesty, upon the credit of treasury bills, any sum or sums not exceeding in whole the principal sums named in such bills.

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### *Colonial Stock.*

40 & 41 VICT. c. 59.

*An Act to amend the Law with respect to the Transfer of Stock forming part of the Public Debt of any Colony, and the Stamp Duty on such Transfer.* [14th August, 1877.]

Stock certi-  
cate to  
bearer.

7. The registrar, if so authorized by the government of a colony issuing stock to which this act applies, shall on application and payment of the fees and stamp duty, if any, chargeable in respect of the certificate, grant to a stockholder a certificate (in this act called a stock certificate to bearer) which shall entitle the bearer to the stock therein described, and shall be transferable by delivery.

There shall be attached to such certificate coupons entitling the bearer of or person named in the coupons to the dividends on the stock for a limited period.

Any stock in respect of which a stock certificate to bearer has been so issued shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

A coupon so issued shall be deemed to be a cheque on a banker within the meaning of any law or enactment for the time being in force relating to cheques other than any enactment relating to stamp duties.

Stamp duty  
on stock cer-  
tificate to  
bearer.

8. Where a composition has not been paid in respect of the stamp duty chargeable on the transfer of any stock to which this act applies, a stock certificate to bearer issued in respect of that stock shall be charged with a stamp duty of two shillings and sixpence for every full sum of one hundred pounds, and also for every fraction less than one hundred pounds, or over and above one hundred pounds or a multiple of one hundred pounds, of the nominal amount of stock described in such certificate.

9. On the expiration of the period for which the coupons attached to a stock certificate to bearer have been issued under this act, the certificate may be exchanged for another certificate with coupons for a further period: Provided, that the certificate issued in exchange, if the stamp duty has not been compounded, shall be duly stamped, but in such case the Commissioners of Inland Revenue shall, on production to them of both certificates duly stamped, and subject to such regulations as they may from time to time make, grant allowance for the stamp on the former certificate. Renewal of coupons or certificate.

10. On delivery to the registrar of a stock certificate to bearer issued under this act, and of all unpaid coupons belonging thereto, the registrar shall enter the bearer in the register as proprietor of the stock described in the certificate, and thereupon that stock shall become transferable and the dividends thereon payable as if no stock certificate to bearer had been issued in respect of that stock. Conversion into nominal stock of stock in certificate to bearer.

11. If the bearer of a stock certificate to bearer issued under this act insert therein the name, address, and quality of some person, such certificate shall cease to be transferable, and the person so named, or some person deriving title from him by devolution in law, shall alone be recognized by the registrar as entitled to the stock described in the certificate, and shall be entitled to be entered in the register as proprietor of that stock in like manner as if he were the bearer of a stock certificate to bearer, but if deriving his title by devolution in law he shall produce such evidence of his title as the registrar may reasonably require. Conversion of stock certificate to bearer into nominal certificate.

12. A trustee shall not apply for or hold a stock certificate to bearer issued under this act unless expressly authorized to do so by the terms of his trust. But this provision shall not impose on the registrar an obligation to inquire whether a person applying for a stock certificate to bearer is or is not a trustee, or subject the registrar to any liability in the event of his issuing a stock certificate to bearer to a trustee, or invalidate any stock certificate to bearer issued. Trustee not to apply for stock certificate to bearer.

13. If any stock certificate to bearer issued under this act is lost, mislaid, or destroyed, the registrar shall, on such indemnity being given as he may reasonably require, and on payment of the expense of the issue, issue a fresh stock certificate to bearer in the place of the certificate so lost, mislaid, or destroyed. Loss of stock certificate to bearer.

14. Stock described in a stock certificate to bearer issued under this act shall, save as relates to the mode of transfer and payment of dividends, be subject to the same incidents in all respects as if it had continued to be transferable in the register. Stock in certificate to bearer to have incidents of other stock, except as to transfer, &c.

Forgery of transfers of stock and of stock certificates, and personation of owners of stock, &c.  
33 & 34 Vict. c. 58.

21. For the purposes of the act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the statute law of England relating to indictable offences by forgery," colonial stock to which this act applies shall be deemed to be capital stock of a body corporate.

The Forgery Act, 1870, shall apply to a stock certificate and a coupon issued in pursuance of this act, and to colonial stock to which this act applies, in like manner as if the same were a stock certificate, coupon, or stock mentioned in that act.

Stock to which act applies to be personal estate.

22. Colonial stock to which this act applies shall be personal estate, and shall not be liable to any foreign attachment by the custom of London or otherwise.

### *Bills of Sale Act, 1878.*

41 & 42 VICT. c. 31.

*An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.*  
[22nd July, 1878.]

WHEREAS it is expedient to consolidate and amend the law relating to bills of sale of personal chattels:

Be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title.

1. This act may be cited for all purposes as the Bills of Sale Act, 1878.

Commence-  
ment.

2. This act shall come into operation on the first day of January one thousand eight hundred and seventy-nine, which day is in this act referred to as the commencement of this act.

Application  
of act.

3. This act shall apply to every bill of sale executed on or after the first day of January one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

Interpreta-  
tion of terms.

4. In this act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The expression "bill of sale" shall include bills of sale,

assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase-moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person:

Application  
of act to  
trade ma-  
chinery.

“Prescribed” means prescribed by rules made under the provisions of this act.

5. From and after the commencement of this act trade machinery shall, for the purposes of this act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this act.

For the purposes of this act—

“Trade machinery” means the machinery used in or attached to any factory or workshop ;

- 1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers ; and,
- 2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose ; and,
- 3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this act.

“Factory or workshop” means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them ; that is to say,

- (a.) In or incidental to the making any article or part of an article ; or
- (b.) In or incidental to the altering, repairing, ornamenting, finishing, of any article ; or
- (c.) In or incidental to the adapting for sale any article.

Certain in-  
struments  
giving  
powers of  
distress to be  
subject to  
this act.

6. Every attornment, instrument, or agreement not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this act, of any personal chattels which may be seized or taken under such power of distress.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall

have demised to the mortgagor as his tenant at a fair and reasonable rent.

7. No fixtures or growing crops shall be deemed, under this act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this act.

8. Every bill of sale to which this act applies shall be duly attested and shall be registered under this act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

Avoidance of unregistered bill of sale in certain cases.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same

Avoidance of certain duplicate bills of sale.

debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this act.

Mode of registering bills of sale.

10. A bill of sale shall be attested and registered under this act in the following manner :

- (1.) The execution of every bill of sale shall be attested by a solicitor of the supreme court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor :
- (2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed :
- (3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this act therewith and as part thereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

11. The registration of a bill of sale, whether executed before or after the commencement of this act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void. Renewal of registration.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the schedule (A.) to this act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

12. The registrar shall keep a book (in this act called "the register") for the purposes of this act, and shall, upon the filing of any bill of sale or copy under this act, enter therein in the form set forth in the second schedule (B.) to this act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration. Form of register.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be The registrar.

36 & 37 Vict.  
c. 66.  
38 & 39 Vict.  
c. 77.

Rectification  
of register.

Entry of  
satisfaction.

Copies may  
be taken, &c.

Affidavits.

Fees.

assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this act, and any one of the said masters may perform all or any of the duties of the registrar.

14. Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this act, or the omission or misstatement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or misstatement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

15. Subject to and in accordance with any rules to be made under and for the purposes of this act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all Courts and before all arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp.

17. Every affidavit required by or for the purposes of this act may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this act shall be deemed guilty of wilful and corrupt perjury.

18. There shall be paid and received in common law stamps the following fees, viz.:

On filing a bill of sale . . . . .	2s.
On filing the affidavit of execution of a bill of sale . . . . .	2s.
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing) . . . . .	5s.

19. Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Collection of fees under 38 & 39 Vict. c. 77, s. 26.

20. Chattels comprised in a bill of sale which has been and continues to be duly registered under this act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

Order and disposition.

32 & 33 Vict. c. 71.

21. Rules for the purposes of this act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

Rules.

36 & 37 Vict. c. 66.

38 & 39 Vict. c. 77.

22. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

Time for registration.

23. From and after the commencement of this act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this act shall affect any bill of sale executed before the commencement of this act, and as regards bills of sale so executed the acts hereby repealed shall continue in force.

Repeal of acts.

17 & 18 Vict. c. 36.

29 & 30 Vict. c. 96.

Any renewal after the commencement of this act of the registration of a bill of sale executed before the commencement of this act, and registered under the acts hereby repealed, shall be made under this act in the same manner as the renewal of a registration made under this act.

24. This act shall not extend to Scotland or to Ireland.

Extent of act.

## SCHEDULES.

### SCHEDULE (A).

### Section 11.

I [A. B.] of do swear that a bill of sale, bearing date the day of 18 [insert the date of the bill], and made between [insert the names and descriptions of the parties in the original bill of sale], and which said bill of sale [or, and a copy of which said bill of sale, as the case may be] was registered on the day of 18 [insert date of registration], is still a subsisting security. Sworn, &c.

Section 12.

SCHEDULE (B).

Satisfaction entered.	No.	By whom given (or against whom process issued).			To whom given.	Nature of Instrument.	Date.	Date of registration.	Date of registration of affidavit of renewal.
		Name.	Residence.	Occupation.					

*Bankers' Books Evidence Act, 1879.*

42 VICT. c. 11.

*An Act to amend the Law of Evidence with respect to Bankers' Books.* [23rd May, 1879.]

BE it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Short title. 1. This act may be cited as the Bankers' Books Evidence Act, 1879.

Repeal of 39 & 40 Vict. c. 48. 2. The Bankers' Books Evidence Act, 1876, shall be repealed as from the passing of this act, but such repeal shall not affect anything which has been done or happened before such repeal takes effect.

Mode of proof of entries in bankers' books. 3. Subject to the provisions of this act, a copy of any entry in a banker's book shall in all legal proceedings be received as primâ facie evidence of such entry, and of the matters, transactions, and accounts therein recorded.

Proof that book is a banker's books. 4. A copy of an entry in a banker's book shall not be received in evidence under this act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorized to take affidavits.

Verification of copy. 5. A copy of an entry in a banker's book shall not be received in evidence under this act unless it be further proved that the copy has been examined with the original entry and is correct.

Such proof shall be given by some person who has examined

the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner or person authorized to take affidavits.

6. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause.

Case in which banker, &c. not compellable to produce book, &c.

7. On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs.

Court or judge may order inspection, &c.

8. The costs of any application to a court or judge under or for the purposes of this act, and the costs of anything done or to be done under an order of a court or judge made under or for the purposes of this act shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

Costs.

9. In this act the expressions "bank" and "banker" mean any person, persons, partnership, or company carrying on the business of bankers and having duly made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the acts relating to savings banks, and also any post office savings bank.

Interpretation of "bank," "banker," and "bankers' books."

The fact of any such bank having duly made a return to the Commissioners of Inland Revenue may be proved in any legal proceeding by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the Commissioners of Inland Revenue; the fact that any such savings bank is certified under the acts relating to savings banks may be proved by an office or examined copy of its certificate; the fact that any such bank is a post office savings bank may be proved by a certificate purporting to be under the hand of her Majesty's Postmaster-General or one of the secretaries of the Post Office.

Expressions in this act relating to "bankers' books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

Interpreta-  
tion of "legal  
proceeding,"  
"court,"  
"judge."

10. In this act—

The expression "legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration ;

The expression "the court" means the court, judge, arbitrator, persons, or person before whom a legal proceeding is held or taken ;

The expression "a judge" means with respect to England a judge of the High Court of Justice, and with respect to Scotland a lord ordinary of the Outer House of the Court of Session, and with respect to Ireland a judge of the High Court of Justice in Ireland ;

The judge of a county court may with respect to any action in such court exercise the powers of a judge under this act.

Computation  
of time.

11. Sunday, Christmas Day, Good Friday, and any bank holiday shall be excluded from the computation of time under this act.

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*Companies Act, 1879.*

42 & 43 VICT. c. 76.

*An Act to amend the Law with respect to the Liability of Members of Banking and other Joint Stock Companies ; and for other purposes.* [15th August, 1879.]

BE it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Short title.

1. This act may be cited as the Companies Act, 1879.

Act not to  
apply to Bank  
of England.

2. This act shall not apply to the Bank of England.

Act to be con-  
strued with  
25 & 26 Vict.  
c. 89,  
30 & 31 Vict.  
c. 131, and  
40 & 41 Vict.  
c. 26.

3. This act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, and 1877, and those acts together with this act may be referred to as the Companies Acts, 1862 to 1879.

Registration  
anew of com-  
pany.

4. Subject as in this act mentioned, any company registered before or after the passing of this act as an unlimited company may register under the Companies Acts, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register under the provisions of this act.

25 & 26 Vict.  
c. 89.  
30 & 31 Vict.  
c. 131.  
40 & 41 Vict.  
c. 26.

The registration of an unlimited company as a limited company in pursuance of this act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations

may be enforced in manner provided by Part VII. of the Companies Act, 1862, in the case of a company registering in pursuance of that part.

5. An unlimited company may, by the resolution passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up.

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

6. Section one hundred and eighty-two of the Companies Act, 1862, is hereby repealed, and in place thereof it is enacted as follows:—A bank of issue registered as a limited company, either before or after the passing of this act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the noteholders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

For the purposes of this section the expression “the general assets of the company” means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

42 & 43 Vict.  
c. 76.

25 & 26 Vict.  
c. 89.

Reserve  
capital of  
company,  
how provided.

25 & 26 Vict.  
c. 89.

30 & 31 Vict.  
c. 131.

40 & 41 Vict.  
c. 26.

42 & 43 Vict.  
c. 76.

25 & 26 Vict.  
c. 89, s. 182,  
repealed, and  
liability of  
bank of issue  
unlimited in  
respect of  
notes.

Audit of  
accounts of  
banking  
companies.

7. (1.) Once at the least in every year the accounts of every banking company registered after the passing of this act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company: provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance sheet laid before the company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance sheet referred to in the report is a full and fair balance sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company; and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company.

Signature of  
balance sheet.

8. Every balance sheet submitted to the annual or other meeting of the members of every banking company registered after the passing of this act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least.

Application of  
25 & 26 Vict.  
c. 89,  
30 & 31 Vict.  
c. 121, and  
40 & 41 Vict.  
c. 26.

9. On the registration, in pursuance of this act, of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was fur-

nished on the occasion of the original registration of the company; but, save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Companies Acts, 1862 to 1879, and as if the provisions of the acts under which the company was previously registered and regulated had been contained in different acts of parliament from those under which the company is registered as a limited company.

10. A company authorised to register under this act may register thereunder and avail itself of the privileges conferred by this act, notwithstanding any provisions contained in any act of parliament, royal charter, deed of settlement, contract of copartnery, cost book, regulations, letters patent, or other instrument constituting or regulating the company.

40 & 41 Vict.  
c. 26.

25 & 26 Vict.  
c. 89,

30 & 31 Vict.  
c. 131,

40 & 41 Vict.  
c. 26, and

42 & 43 Vict.  
c. 76.

Privileges of  
act available,  
notwith-  
standing con-  
stitution of  
company.

### *India Stock (Powers of Attorney) Act, 1880.*

43 VICT. c. 11.

*An Act to make Powers of Attorney and Requests for Transmission of Dividend Warrants by Post relating to India Five per centum Stock applicable to India Four per centum Stock.*  
[19th March, 1880.]

1. This act may be cited as India Stock (Powers of Attorney) Act, 1880. Short title.

2. Every power of attorney in force at the time of the passing of this act for the sale and transfer of any India five per cent. stock shall, unless it be legally revoked or become void, remain in force for the purpose of enabling the attorney or attorneys therein named or referred to to receive and give receipts for any principal sum of such India five per cent. stock, and to sell and transfer any India four per cent. stock, that may be accepted in exchange for such five per cent. stock, and to receive the consideration money and give receipts for the same. Powers of  
attorney for  
sale and trans-  
fer of India  
five per cent.  
stock to apply  
to India four  
per cent.  
stock.

3. Every power of attorney in force at the time of the passing of this act for the receipt of dividends on any India five per cent. stock shall, unless it be legally revoked or become void, remain in force for the purpose of enabling the attorney or attorneys therein named or referred to to receive the dividends to accrue on India four per cent. stock, and also to receive the said payment of one pound ten shillings per cent. on India five per cent. stock which will become payable on the fifth day of July one thousand eight hundred and eighty. Powers of  
attorney for  
receipt of  
dividends on  
India five per  
cent. stock to  
apply to India  
four per cent.  
stock.

Requests for  
post dividend  
warrants in  
respect of  
India five per  
cent. stock. to  
apply to India  
four per cent.  
stock.

4. Every request for the transmission of dividend warrants by post relating to India five per cent. stock in force at the time of the passing of this act, or which may hereafter be made, in pursuance of the act of the 34th and 35th Victoria, chapter 29, shall, unless it be legally revoked or become void, extend and apply to India four per cent. stock as if the stock mentioned in such request were therein described as India four per cent. stock.

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43 & 44 VICT. c. 20.

*An Act to grant and alter certain Duties of Inland Revenue and to amend the Law in relation to certain other Duties.*

57. It shall not after the passing of this act be obligatory on the commissioners to publish in any newspaper any return made to them by any banking company which is duly registered under the provisions of the several acts specified in the third schedule, or any of them.

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## II. RELATING TO SCOTLAND EXCLUSIVELY.

### *Bank Notes payable on Demand.*

5 GEO. 3, c. 49 (A.D. 1765).

*An Act to prevent the Inconveniences arising from the present Method of issuing Notes and Bills by the Banks, Banking Companies and Bankers, in that part of Great Britain called Scotland (a).*

Preamble.

From and  
after 15th  
May, 1766, no  
notes to be

WHEREAS a practice has prevailed in that part of Great Britain called Scotland of issuing notes commonly called bank notes, for sums of money payable to the bearer on demand, or, in the option of the issuer or granter, payable at the end of six months with a sum equal to the legal interest from the demand to that time: and whereas notes, with such option as aforesaid, have been and are circulated in that part of the United Kingdom to a great extent, and do pass from hand to hand as specie, whereby great inconveniences have arisen: for remedy whereof be it enacted, &c., that from and after the 15th day of May, 1766, it shall not be lawful for any person or persons whatsoever, bodies politic or corporate,

to issue or give, or cause to be issued or given, within that part of Great Britain called Scotland, any note, ticket, token, or other writing for money, of the nature of a bank note, circulated or to be circulated as specie, but such as shall be payable on demand, in lawful money of Great Britain, and without reserving any power or option of delaying payment thereof for any time or term whatsoever; and that from and after the said 15th day of May, 1776, all notes, tickets, tokens, or other writings for money, of the nature of a bank note, issued previous to the said day, and circulated as specie in that part of the United Kingdom, shall and they are hereby declared and adjudged to be payable on demand in lawful money aforesaid, any option, condition, or other clause therein contained to the contrary notwithstanding.

2. Provided always, that nothing contained in this act shall prevent any person or persons, bodies politic or corporate, from issuing post bills, payable seven days after sight, in the same manner as they are at present issued by the Bank of England.

3. That all and every person or persons whatsoever, bodies politic or corporate, and the legal administrators of such person or persons, bodies politic or corporate, who shall after the said 15th day of May, 1766, issue or cause to be issued any note, ticket, token, or other writing for money, of the nature of a bank note, circulated or to be circulated as specie, contrary to the directions of this act before mentioned, and to the true meaning and intent thereof, shall for every such offence forfeit and pay to the person or persons who shall inform and prosecute for the same, 500*l.* sterling, with full costs of suit, to be sued for and recovered by way of complaint before the Court of Session, upon 15 days' notice to the person or persons, bodies politic or corporate, complained of; which complaint the said Court of Session is hereby authorized and required summarily to determine without abiding the course of any roll (a).

issued in Scotland and circulated as specie but what shall be payable on demand;

and notes issued and circulated as specie previously to the said day shall be payable on demand, notwithstanding any optional clause to the contrary.

Post bills payable at seven days' sight excepted; and persons acting contrary hereto forfeit 500*l.*,

with full costs of suit.

### *Banking Copartnerships Regulation Act, 1826.*

7 GEO. 4, c. 67.

*An Act to regulate the Mode in which certain Societies or Copartnerships for Banking in Scotland may sue and be sued.*  
[26th May, 1826.]

WHEREAS the practice has prevailed in Scotland of instituting societies possessing joint stocks, the shares of which are

(a) The subsequent unrepealed sections, viz., 4, 5 and 6, relating to enforcing payment of these notes or orders by summary execution and method of protesting on non-payment, are not printed.

Banking co-  
partnerships  
in Scotland  
may sue and  
be sued in the  
name of their  
manager, &c.

Such societies  
shall yearly  
deliver, at the  
stamp office in  
Edinburgh,  
account, con-  
taining the  
name of the  
firm, &c.

either conditionally or unconditionally transferable, for the purpose of carrying on the business of banking; and it is expedient that every such society or copartnership should be enabled to sue and be sued in the name of its manager, cashier, or other principal officer; be it therefore enacted, &c., that it shall and may be lawful for every such joint stock society or copartnership, already established or that may hereafter be established in Scotland for the purposes of banking, to sue and be sued in the name of the manager, cashier, or other principal officer of such society or copartnership, provided that such joint stock society or copartnership shall observe the regulations prescribed by this act.

2. That every such joint stock society or copartnership already formed shall, between the 25th day of May, and the 25th day of July in this and each succeeding year, and every such joint stock society or copartnership hereafter to be formed, shall, before such joint stock society or copartnership shall begin to carry on business, and thereafter in each succeeding year, between the said 25th day of May and the 25th day of July, cause an account or return to be made out according to the form contained in the schedule marked A. to this act annexed (b), wherein shall be set forth the true

(b) SCHEDULE (A.).

RETURN or account to be entered at the Stamp Office in Edinburgh, in pursuance of an act passed in the seventh year of the reign of King George the Fourth, intituled [*here insert the title of this act*], viz.

Firm or name of the banking society or copartnership, viz. [*set forth the firm or name*].

Names and places of abode of all the partners concerned or engaged in such society or copartnership, videlicet [*set forth all the names and places of abode*].

Names and places of the bank or banks established by such society or copartnership, videlicet [*set forth all the names and places*].

Name and description of the officer of the said banking society or copartnership in whose name such society or copartnership shall sue and be sued, videlicet [*set forth the name and description*].

Names of the several towns and places where the bills or notes of the said banking society or copartnership are to be issued by the said society or copartnership, or their agent or agents, videlicet [*set forth the names of all the towns and places*].

A. B. of            manager, or other officer [*describing the office*], of the above society or copartnership, maketh oath and saith, that the above doth contain the name, style and firm of the above society or copartnership, and the names and places of the abode of the several members thereof, and of the banks established by the said society or copartnership, and the name, title and description of the officer of the said society or copartnership in whose name such society or copartnership shall sue and be sued, and the names of the towns and places where the notes of the said society or copartnership are to be issued, as the same respectively appear in the

names, title or firm of such intended or existing society or copartnership, and also the names and places of abode of all the members of such society, or of all the partners concerned or engaged in such copartnership, as the same respectively shall appear on the books of such society or copartnership, and the name or firm of every bank or banks established or to be established by such society or copartnership, and also the name and place of abode of the manager, cashier, or other principal officer, in the name of whom such society or copartnership shall sue and be sued, as hereinafter provided, and also the name of every town and place where any of the bills or notes of such society or copartnership shall be issued by any such society or copartnership, or by their agent or agents; and every such account or return shall be delivered to the head collector of stamp duties at the stamp office in Edinburgh, who shall cause the same to be filed and kept in the stamp office there, and an entry and registry thereof to be made in a book or books to be there kept for that purpose, and which book or books any person or persons shall from time to time have liberty to search and inspect, on payment of the sum of 1s. for every search.

3. That such account or return shall be made out by the officer named as aforesaid, and shall be verified by the oath of such officer taken before any justice of the peace, and which oath any justice of the peace is hereby authorized and empowered to administer, and that such account or return shall, between the 25th day of May and the 25th day of July in every year, be in like manner delivered by such officer as aforesaid to the said collector, to be filed and kept in the manner and for the purposes as hereinbefore mentioned.

Accounts to be  
verified on  
oath.

4. That a copy of any such account or return, so filed and kept and registered at the stamp office, as by this act is directed, and which copy shall be certified to be a true copy, under the hand of the said collector, or of the comptroller of the stamp duties at Edinburgh, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the officer named in such account or return, and also of the fact that all persons named therein as members of such society or copartnership were members thereof at the date of such account or return.

Certified  
copies of such  
returns to be  
evidence of  
the appoint-  
ment of the  
public officers,  
&c.

5. That the said collector or comptroller for the time being

Commis-  
sioners of

books of the said society or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me the  
in the county of

day of at

C. D. justice of the peace in and  
for the said county.

stamps to give  
certified  
copies of  
affidavits.

Account of  
officers or  
members in  
the course of  
any year to  
be made.

shall, and he is hereby required, upon application made to him by any person or persons requiring a copy certified according to this act, of any such account or return as aforesaid, in order that the same may be produced in evidence, or for any other purpose, to deliver to the person or persons so applying for the same such certified copy, he, she, or they paying for the same the sum of ten shillings and no more.

6. Provided also, and be it further enacted, that the manager or other officer of every such society or copartnership shall, and he is hereby required from time to time, as often as occasion shall render it necessary, make out upon oath, in manner hereinbefore directed, and cause to be delivered to the said collector as aforesaid, a further account or return according to the form contained in the schedule marked (B.) to this act annexed (a), of the name of any person who shall have been nominated or appointed a new or additional officer of such society or copartnership, in whose name the same shall sue and be sued, and also of the name or names of any person or persons who shall have ceased to be members of such society or copartnership, and also of the name or names of any person or persons who shall have become a member or members of such society or copartnership, either in addition

(a) SCHEDULE (B.).

RETURN or account to be entered at the Stamp Office in Edinburgh, on behalf of [*name the society or copartnership*], in pursuance of an act passed in the seventh year of the reign of King George the Fourth, intituled [*insert the title of this act*], videlicet,

Name of any new or additional officer of the said society or copartnership in whose name the same shall sue and be sued, videlicet,

A. B. in the room of C. D. deceased or removed [*as the case may be*].

Names of any and every person who may have ceased to be a member of such society or copartnership, videlicet [*set forth every name*].

Names of any and every person who may have become a new member of such society or copartnership [*set forth every name*].

Names of any additional towns or places where bills or notes are to be issued, and where the same are to be made payable.

A. B. of                      manager [*or other officer*] of the above-named society or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of any person who hath become or been appointed an officer of the above society or copartnership, in whose name the same may sue and be sued, and also the name and place of abode of any and every person who hath ceased to be a member of the said society or copartnership, and of any and every person who hath become a member of the said copartnership, since the registry of the said society or copartnership on the day of                      last, as the same respectively appear on the books of the said society or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me, the                      day of                      at  
in the county of

C. D. justice of the peace in and  
for the said county.

to or in the place or stead of any former member or members thereof, and of the name or names of any new or additional town or towns, place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable; and such further accounts or returns shall from time to time be filed and kept, and entered and registered at the stamp office in Edinburgh, in like manner as is hereinbefore required with respect to the original or annual account or return hereinbefore directed to be made.

7. That all actions and suits, and also all petitions to found any sequestration in Scotland, or commission of bankruptcy in England, against any person or persons who may be at any time indebted to any such copartnership carrying on business under the provisions of this act, and all proceedings at law or in equity under any sequestration or commission of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf of any such copartnership, against any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, shall and lawfully may, from and after the passing of this act, be commenced or instituted and prosecuted in the name of the officer named as aforesaid for the time being of such copartnership, as the nominal pursuer, plaintiff, or petitioner, for and on behalf of such copartnership; and that all actions or suits, and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership, shall and lawfully may be commenced, instituted, and prosecuted against the officer named as aforesaid for the time being of such copartnership, as the nominal defender or defendant for and on behalf of such copartnership; and that all indictments, informations, and prosecutions by or on behalf of such copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to such copartnership, or for any fraud, forgery, crime, or offence committed against or with intent to injure or defraud such copartnership, may be had, preferred, and carried on in the name of the officer named as aforesaid, for the time being of such copartnership; and that in all indictments and informations to be had or preferred by or on behalf of such copartnership, against any person or persons whomsoever, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such copartnership to be the money, goods, effects, bills, notes, securities, or

Copartner-  
ships shall sue  
and be sued  
in the name  
of their  
officer.

other property of the officer named as aforesaid, for the time being, of such copartnership; and that any forgery, fraud, crime, or other offence committed against or with intent to injure or defraud any such copartnership, shall and lawfully may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against or with intent to injure or defraud the officer named as aforesaid, for the time being, of such copartnership; and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence; and that in all other allegations, indictments, informations or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing such copartnership, it shall and may be lawful and sufficient to state the name of the officer named as aforesaid, for the time being, of such copartnership; and the death, resignation, removal, or any act of such officer shall not abate or prejudice any such action, suit, indictment, information, prosecution, or other proceeding commenced against, or by or on behalf of such copartnership, but the same may be continued, prosecuted, and carried on in the name of any other manager, cashier, or other principal officer of such copartnership for the time being.

Not more than one action for the recovery of one demand.

8. That no person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such society or copartnership, shall bring more than one action or suit, in case the merits shall have been tried in such action or suit, in respect of such demand; and the proceedings in any action or suit by or against the officer named as aforesaid for the time being of any such copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same demand, by or against such copartnership.

Decrees of a court of equity against the officer to take effect against the copartnership.

9. That all and every decree or decrees, order or orders, interlocutor or interlocutors, made or pronounced in any suit or proceeding in any court of law or equity against the officer named as aforesaid of any such copartnership carrying on business under the provisions of this act, shall have the like effect and operation upon and against the property and funds of such copartnership, and upon and against the persons and property of every or any member or members thereof, as if every or any such members of such copartnership were parties before the court to and in any such suit or proceeding; and such order, interlocutor, and decree shall be enforced against every or any member of such copartnership, in like manner as if every such member of such copartnership was a party before such court to and in such suit or proceeding.

Judgments against officer shall operate

10. That all and every judgment and judgments, decree or decrees, in any action, suit or proceedings in law or equity

against the officer named as aforesaid of any such copartnership, shall have the like effect and operation upon and against the property of such copartnership, and upon and against the property of every such member thereof as aforesaid, as if such judgment or judgments had been recovered or obtained against such copartnership; and that the bankruptcy, insolvency, or stopping payment of such officer for the time being of such copartnership, in his individual character or capacity, shall not be nor be construed to be the bankruptcy, insolvency, or stopping payment of such copartnership; and that such copartnership and every member thereof, and the capital stock and effects of such copartnership, and the effects of every member of such copartnership, shall in all cases, notwithstanding the bankruptcy, insolvency, or stopping payment of any such officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such copartnership, or of any member or members thereof, as if no such bankruptcy, insolvency, or stopping payment of such officer had happened or taken place.

against the  
copartner-  
ship.

11. Provided always, that such officer in whose name any such suit or action shall have been commenced, prosecuted, or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs, and charges which such officer or person may have incurred by reason of such execution, out of the funds of such copartnership, or in failure thereof, from the funds of the other members of such copartnership, as in the ordinary cases of copartnership.

Officer, &c. in  
such cases  
indemnified.

12. [Not to affect questions depending at the time of passing this act] (a).

13. Provided always, that no such society or copartnership shall be obliged to take out more than four licences for the issuing of any promissory notes for money payable to the bearer on demand, allowed by law to be re-issued, in all, for any number of towns or places in Scotland; and in case any such society or copartnership shall issue such promissory notes as aforesaid, by themselves or their agents, at more than four different towns or places in Scotland, then after taking out three distinct licences for three of such towns or places, such society or copartnership shall be entitled to have all the rest of such towns or places included in a fourth licence.

Limiting the  
number of  
licences to be  
taken out for  
branches.

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(a) Repealed by the Statute Law Revision Act, 1873, 36 & 37 Vict. c. 91.

Penalty on  
copartnership  
neglecting to  
send returns,  
and penalties  
for making  
false returns.

14. That if any such society or copartnership, carrying on the business of bankers under the authority of this act, shall issue any bills or notes, or to borrow or owe or take up any money on their bills or notes, without having caused such account or return as aforesaid to be made out and delivered in the manner and form directed by this act, or shall neglect or omit to cause such account or return to be renewed yearly and every year between the days or times hereinbefore appointed for that purpose, such society or copartnership so offending shall, for each and every week they shall so neglect to make such account and return forfeit the sum of 500*l.*; and if any officer of such society or copartnership shall make out or sign any false account or return, or any account or return which shall not truly set forth all the several particulars by this act required to be contained or inserted in such account or return, the society or copartnership to which such officer so offending shall belong, shall for every such offence forfeit the sum of 500*l.*, and the said officer so offending shall also for every such offence forfeit the sum of 100*l.*; and if any such officer making out or signing any such account or return as aforesaid, shall knowingly and wilfully make a false oath of or concerning any of the matters to be therein specified and set forth, every such officer so offending, and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

Penalties,  
how to be re-  
covered.

15. That all pecuniary penalties and forfeitures imposed by this act shall and may be sued for and recovered in his Majesty's Court of Exchequer at Edinburgh, in the same manner as penalties incurred under any act or acts relating to stamp duties may be sued for and recovered in such court.

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*The Bank Notes Issue Regulation Act.*

8 & 9 VICT. c. 38.

*An Act to regulate the Issue of Bank Notes in Scotland.*

[21st July, 1845.]

7 & 8 Vict.  
c. 32, s. 10.

WHEREAS by an act made and passed in the 8th year of the reign of her Majesty, intituled "An Act to regulate the issue of bank notes, and for giving to the Governor and Company of the Bank of England certain privileges for a limited period," it was enacted that from and after the passing of that act no person, other than a banker, who on the 6th day

of May, 1844, was lawfully issuing his own bank notes, should make or issue bank notes in any part of the United Kingdom; and whereas it is expedient to regulate the issue of bank notes by such bankers as are now by law authorized to issue the same in Scotland; be it therefore enacted, &c., that every banker claiming to be entitled to issue bank notes in Scotland shall, within one month next after the passing of this act, give notice in writing to the commissioners of stamps and taxes, at their head office in London, of such claim, and of the place and name and firm at and under which such banker has issued such notes in Scotland during the year next preceding the 1st day of May, 1845, and thereupon the said commissioners shall ascertain if such banker was on the 6th day of May, 1844, and from thence up to the 1st day of May, 1845, carrying on the business of a banker and lawfully issuing his own bank notes in Scotland, and if it shall so appear then the said commissioners shall proceed to ascertain the average amount of the bank notes of such banker which were in circulation during the said period of one year preceding the 1st day of May, 1845, according to the returns made by such banker in pursuance of the act passed in the 4th and 5th years of the reign of her present Majesty, intituled "An Act to make further provision relative to the returns to be made by banks of the amount of their notes in circulation;" and the said commissioners, or any two of them, shall certify under their hands to such banker the average amount when so ascertained as aforesaid, omitting the fractions of a pound, if any; and it shall be lawful for every such banker to continue to issue his own bank notes after the 6th day of December, 1845, to the extent of the amount so certified, and of the amount of gold and silver coin held by such banker at the head office or principal place of issue of such banker, in the proportion and manner hereinafter mentioned, but not to any further extent; and from and after the 6th day of December, 1845, it shall not be lawful for any banker to make or issue bank notes in Scotland, save and except only such bankers as shall have obtained such certificate from the commissioners of stamps and taxes.

2. Provided always, that if it shall be made to appear to the commissioners of stamps and taxes that any two or more banks have by written contract or agreement (which contract or agreement shall be produced to the said commissioners) become united within the year next preceding such 1st day of May, 1845, it shall be lawful for the said commissioners to ascertain the average amount of the notes of each such bank in the manner hereinbefore directed, and to certify a sum equal to the average amount of the notes of the two or more banks so united, as the amount which the united bank shall there-

Bankers claiming to be entitled to issue bank notes to give notice to commissioners of stamps and taxes.

Commissioners to certify existing banks of issue and limitation of issue.

4 & 5 Vict.  
c. 50.

Provision for united banks.

after be authorized to issue, subject to the regulations of this act.

Duplicate of certificate to be published in the Gazette.

Gazette to be evidence.

3. That the commissioners of stamps and taxes shall, at the time of certifying to any banker such particulars as they are hereinbefore required to certify, also publish a duplicate of their certificate thereof in the next succeeding London Gazette in which the same may be conveniently inserted; and the Gazette in which such publication shall be made shall be conclusive evidence in all courts whatsoever of the amount of bank notes which the banker named in such certificate or duplicate is by law authorized to issue and to have in circulation as aforesaid, exclusive of an amount equal to the monthly average amount of the gold and silver coin held by such banker as herein provided.

In case banks become united, commissioners to certify the amount of bank notes which each bank was authorized to issue.

4. That in case it shall be made to appear to the commissioners of stamps and taxes, at any time hereafter, that any two or more banks have by written contract or agreement (which contract or agreement shall be produced to the said commissioners) become united subsequently to the passing of this act, it shall be lawful to the said commissioners, upon the application of such united bank, to certify in manner hereinbefore mentioned the aggregate of the amount of bank notes which such separate bank were previously authorized to issue under the separate certificates previously delivered to them, and so from time to time; and every such certificate shall be published in manner hereinbefore directed, and from and after such publication the amount therein stated shall be and be deemed to be the limit of the amount of bank notes which such united bank may have in circulation, exclusive of an amount equal to the monthly average amount of the gold and silver coin held by such bank, as herein provided.

Issue of notes for fractional parts of a pound prohibited.

5. That all bank notes to be issued or re-issued in Scotland shall be expressed to be for payment of a sum in pounds sterling, without any fractional parts of a pound; and if any banker in Scotland shall, from and after the 6th day of December, 1845, make, sign, issue or re-issue any bank note for the fractional part of a pound sterling, or for any sum together with the fractional part of a pound sterling, every such banker so making, signing, issuing, or re-issuing any such note as aforesaid shall for each note so made, signed, issued, or re-issued forfeit or pay the sum of 20*l*.

Limitation of bank notes in circulation.

6. That from and after the 6th day of December, 1845, it shall not be lawful for any banker in Scotland to have in circulation, upon the average of a period of four weeks, to be ascertained as hereinafter mentioned, a greater amount of notes than an amount composed of the sum certified by the commissioners of stamps and taxes as aforesaid and the monthly average amount of gold and silver coin held by such

banker at the head office or principal place of issue of such banker during the same period of four weeks, to be ascertained in manner hereinafter mentioned.

7. That every banker who after the 6th day of December, 1845, shall issue bank notes in Scotland shall, on some one day in every week after the 13th day of December, 1845 (such day to be fixed by the commissioners of stamps and taxes), transmit to the said commissioners a just and true account of the amount of bank notes of such banker in circulation at the close of the business on the next preceding Saturday, distinguishing the notes of 5*l.* and upwards, and the notes below 5*l.*, and also an account of the total amount of gold and silver coin held by such banker at the head office or principal place of issue in Scotland of such banker at the close of business on each day of the week ending on the same Saturday, and also an account of the total amount of gold and silver coin in Scotland held by such banker at the close of business on that day; and on completing the first period of four weeks, and so on completing each successive period of four weeks, every such banker shall annex to such account the average amount of bank notes of such banker in circulation during the said four weeks, distinguishing the bank notes of 5*l.* and upwards and the notes below 5*l.*, and the average amount of gold and silver coin respectively held by such banker at the head office or principal place of issue in Scotland of such banker during the said four weeks, and also the amount of bank notes which such banker is, by the certificate published as aforesaid in the London Gazette, authorized to issue under the provisions of this act; and every such account shall specify the head office or principal places of issue in Scotland of such banker, and shall be verified by the signature of such banker or his chief cashier, or in case of a company or partnership by the signature of the chief cashier or other officer duly authorized by the directors of such company or partnership, and shall be made in the form to this act annexed marked (A.) (a); and if such banker shall neglect or refuse to render any such account in the form and at the time required by this act, or shall at any time render a false account, such banker shall forfeit the sum of 100*l.* for every such offence.

Issuing banks  
to render  
accounts.

8. That all bank notes shall be deemed to be in circulation from the time the same shall have been issued by any banker, or any servant or agent of such banker, until the same shall have been actually returned to such banker, or some servant or agent of such banker.

What shall be  
deemed to be  
bank notes in  
circulation.

9. That from the returns so made by each banker to the commissioners of stamps and taxes the said commissioners

Commis-  
sioners of  
stamps and

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(a) See schedule, *post*, p. 686.



shall, at the end of the first period of four weeks after the said 6th day of December, 1845, and so at the end of each successive period of four weeks, make out a general return in the form to this act annexed marked (B.) (a) of the monthly average amount of bank notes in circulation of each banker in Scotland during the last preceding four weeks, and of the average amount of all the gold and silver coin held by such banker, and certifying under the hand of any officer of the said commissioners duly authorized for that purpose, in the case of each such banker, whether such banker has held the amount of coin required by law during the period to which the said return shall apply, and shall publish the same in the next succeeding London Gazette in which the same can be conveniently inserted.

taxes to make a monthly return.

10. That for the purpose of ascertaining the monthly average amount of bank notes of each banker in circulation, the aggregate of the amount of bank notes of each such banker in circulation at the close of the business on Saturday of each week during the first complete period of four weeks next after the 6th day of December, 1845, shall be divided by the number of weeks, and the average so ascertained shall be deemed to be the average of bank notes of each such bank in circulation during such period of four weeks, and so in each successive period of four weeks; and the monthly average amount of gold and silver coin respectively held as aforesaid by such banker shall be ascertained in like manner from the amount of gold and silver coin held by such banker at the head office or principal place of issue in Scotland of such banker at the close of business on Saturday in each week during the same period; and the monthly average amount of bank notes of each such banker in circulation during any such period of four weeks is not to exceed a sum made up by adding the amount certified by the commissioners of stamps and taxes as aforesaid and the monthly average amount of gold and silver coin held by such banker as aforesaid during the same period.

Mode of ascertaining the average amount of bank notes of each banker in circulation, and gold coin, during the first four weeks after 31st December, 1845.

11. That in taking account of the coin held by any such banker as aforesaid, with respect to which bank notes to a further extent than the sum certified as aforesaid by the commissioners of stamps and taxes may, under the provisions of this act, be made and issued, no amount of silver coin exceeding one fourth part of the gold coin held by such banker as aforesaid shall be taken into account, nor shall any banker be authorized to make and issue bank notes in Scotland, on any amount of silver coin held by such banker exceeding the proportion of one fourth part of the gold coin held by such banker as aforesaid.

In taking the account of coin held by bankers, silver coin not to exceed the proportion of one fourth of gold.

(a) See schedule, *ante*, p. 686.

Commissioners of stamps and taxes empowered to cause the books of bankers containing accounts of their bank notes in circulation, and of gold coin, to be inspected.

Penalty for refusing to allow such inspection.

All bankers to return their names once a year to the stamp office.

12. And whereas in order to ensure the rendering of true and faithful accounts of the amount of bank notes in circulation, and the amount of gold and silver coin held by each banker, as directed by this act, it is necessary that the commissioners of stamps and taxes should be empowered to cause the books of bankers issuing such notes, and the gold and silver coin held by such bankers as aforesaid, to be inspected as hereinafter mentioned: be it therefore enacted, that all and every the book and books of any banker who shall issue bank notes under the provisions of this act, in which shall be kept, contained or entered any account, minute or memorandum of or relating to the bank notes issued or to be issued by such banker, or of or relating to the amount of such notes in circulation from time to time, or of or relating to the gold and silver coin held by such banker from time to time, or any account, minute, or memorandum, the sight or inspection whereof may tend to secure the rendering of true accounts of the average amount of such notes in circulation and gold and silver coin held as directed by this act, or to test the truth of any such account, shall be open for the inspection and examination at all seasonable times of any officer of stamp duties authorized in that behalf by writing signed by the commissioners of stamps and taxes, or any two of them; and every such officer shall be at liberty to take copies of or extracts from any such book or account as aforesaid, and to inspect and ascertain the amount of any gold or silver coin held by such banker; and if any banker or other person keeping any such book, or having the custody or possession thereof or power to produce the same, shall, upon demand made by any such officer showing (if required) his authority in that behalf, refuse to produce any such book to such officer for his inspection and examination, or to permit him to inspect and examine the same, or to take copies thereof or extracts therefrom, or of or from any such account, minute or memorandum as aforesaid, kept, contained or entered therein, or if any banker or other person having the custody or possession of any coin belonging to such banker shall refuse to permit or prevent the inspection of such gold and silver coin as aforesaid, every such banker or other person so offending shall for every such offence forfeit the sum of 100*l*.: provided always, that the said commissioners shall not exercise the powers aforesaid without the consent of the Commissioners of her Majesty's Treasury.

13. That every banker in Scotland who is now carrying on or shall hereafter carry on business as such, other than the Bank of Scotland, the Royal Bank of Scotland, and the British Linen Company, shall, on the 1st day of January in each year, or within 15 days thereafter, make a return to the

commissioners of stamps and taxes, at their head office in London, of his name, residence and occupation, or, in the case of a company or partnership, of the name, residence and occupation of every person composing or being a member of such company or partnership, and also the name of the firm under which such banker, company or partnership carry on the business of banking, and of every place where such business is carried on; and if any such banker, company or partnership shall omit or refuse to make such return within fifteen days after the said 1st day of January, or shall wilfully make other than a true return of the persons as herein required, every banker, company or partnership so offending shall forfeit or pay the sum of 50*l.*; and the said commissioners of stamps and taxes shall on or before the 1st day of March in every year publish in some newspaper circulating within each town or county respectively in which the head office or principal place of issue of any such banker be situated a copy of the return so made by every banker, company or partnership carrying on the business of bankers within such town or county respectively, as the case may be.

14. That if the monthly average circulation of bank notes of any banker, taken in the manner herein directed, shall at any time exceed the amount which such banker is authorized to issue and to have in circulation under the provisions of this act, such banker shall in every such case forfeit a sum equal to the amount by which the average monthly circulation, taken as aforesaid, shall have exceeded the amount which such banker was authorized to issue and to have in circulation as aforesaid.

Penalty on  
banks issuing  
in excess.

15. And whereas by 3 & 4 Will. 4, c. 98, s. 6, it was enacted, that from and after the 1st day of August, 1834, unless and until parliament should otherwise direct, a tender of a note or notes of the Governor and Company of the Bank of England, expressed to be payable to bearer on demand, should be a legal tender to the amount expressed in such note or notes, and should be taken to be valid as a tender to such amount for all sums above 5*l.* on all occasions on which any tender of money may be legally made, so long as the Bank of England should continue to pay on demand their said notes in legal coin: provided always, that no such note or notes should be deemed a legal tender of payment by the Governor and Company of the Bank of England, or any branch bank of the said governor and company: and whereas doubts have arisen as to the extent of the said enactment, for removal whereof be it enacted and declared, that nothing in the said last recited act contained shall extend or be construed to extend to make the tender of a note or notes of the Governor and Company of the Bank of England a legal

Bank of Eng-  
land notes not  
a legal tender  
in Scotland.

Proviso.

tender in Scotland: provided always, that nothing in this act contained shall be construed to prohibit the circulation in Scotland of the notes of the Governor and Company of the Bank of England as heretofore.

Notes for less than 20s. not negotiable in Scotland (a).

16. That all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of any sum or sums of money, or any orders, notes, or undertakings in writing, being negotiable or transferable, for the delivery of any goods, specifying their value in money less than the sum of 20s. in the whole, heretofore made or issued, or which shall hereafter be made or issued in Scotland, shall, from and after the 1st day of January, 1846, be and the same are hereby declared to be absolutely void and of no effect, any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding; and that if any person or persons shall, after the 1st day of January, 1846, by any art, device, or means whatsoever, publish or utter in Scotland any such notes, bills, drafts, or engagements as aforesaid for a less sum than 20s., or on which less than the sum of 20s. shall be due, and which shall be in anywise negotiable or transferable, or shall negotiate or transfer the same in Scotland, every such person shall forfeit and pay for every such offence any sum not exceeding 20*l.* nor less than 5*l.*, at the discretion of the justice of the peace who shall hear and determine such offence (a).

Notes of 20s. or above, and less than 5*l.*, to be drawn in certain form (a).

17. That all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of 20s., or any sum of money above that sum and less than 5*l.*, or on which 20s., or above that sum and less than 5*l.*, shall remain undischarged, and which shall be issued within Scotland at any time after the 1st day of January, 1846, shall specify the names and places of abode of the persons respectively to whom or to whose order the same shall be made payable, and shall bear date before or at the time of drawing or issuing thereof, and not on any day subsequent thereto, and shall be made payable within the space of 21 days next after the day of the date thereof, and shall not be transferable or negotiable after the time hereby limited for payment thereof, and that every indorsement to be made thereon shall be made before the expiration of that time, and to bear date at or not before the time of making thereof, and shall specify the name and place of abode of the person or persons to whom or to whose order the money contained in every such note, bill, draft, or undertaking is to be paid; and that the signing of every such note, bill, draft, or

(a) The restrictions on issuing these notes are repealed or removed by 26 & 27 Viet. c. 105, and 36 & 37 Viet. c. 75, until the 28th July, 1874.

undertaking, and also of every such indorsement, shall be attested by one subscribing witness at the least; and which said notes, bills of exchange, or drafts, or undertakings in writing, may be made or drawn in words to the purport or effect as set out in the schedules to this act annexed marked (C.) (b) and (D.) (c); and that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of 20s., or any sum of money above that sum and less than 5*l.*, or on which 20s., or above that sum and less than 5*l.*, shall remain undischarged, and which shall be issued in Scotland at any time after the said 1st day of January, 1846, in any other manner than as aforesaid, and also every indorsement on any such note, bill, draft, or other undertaking to be negotiated under this act, other than as aforesaid, shall and the same are hereby declared to be absolutely void, any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding: provided always, that nothing in this clause contained shall be construed to extend to any such bank notes as shall be lawfully issued by any banker in Scotland authorized by this act to continue the issue of bank notes.

18. That if any body politic or corporate or any person or persons shall, from and after the said 1st day of January, 1846, make, sign, issue, or re-issue in Scotland any promissory note payable on demand to the bearer thereof for any sum of money less than the sum of 5*l.*, except the bank notes of such bankers as are hereby authorized to continue to issue bank notes as aforesaid, then and in either of such cases every such body politic or corporate or person or persons so making, signing, issuing, or re-issuing any such promissory note as

Penalty for persons other than bankers hereby authorized, issuing notes payable on demand for less than 5*l.*

(b) SCHEDULE (C.)

[Place] [day] [month] [year].  
Twenty-one days after date I promise to pay to A. B. of [place], or  
his order, the sum of for value received by  
Witness, E. F. C. D.

*And the endorsement, toties quoties.*

[Day] [month] [year].  
Pay the contents to G. H. of [place], or his order.  
Witness, J. K. A. B.

(c) SCHEDULE (D.)

[Place] [day] [month] [year].  
Twenty-one days after date pay to A. B. of [place], or his order, the  
sum of value received, as advised by  
To E. F. of [place]. E. D.  
Witness, G. H.

*And the endorsement, toties quoties.*

[Day] [month] [year].  
Pay the contents to J. K. of [place], or his order.  
Witness, L. M. A. B.

aforesaid, except as aforesaid, shall for every such note so made, signed, issued or re-issued forfeit the sum of 20*l*.

Penalty for persons, other than bankers hereby authorized, uttering or negotiating notes, bills of exchange, &c., transferable, for payment of 20*s*. or less than 5*l*.

19. That if any body politic or corporate or person or persons shall, from and after the passing of this act, publish, utter, or negotiate in Scotland any promissory or other note (not being the bank note of a banker hereby authorized to continue to issue bank notes), or any bill of exchange, draft, or undertaking in writing, being negotiable or transferable, for the payment of 20*s*., or above that sum and less than 5*l*., or on which 20*s*., or above that sum and less than 5*l*., shall remain undischarged, made, drawn, or indorsed in any other manner than as is hereinbefore directed, every such body politic or corporate or person or persons so publishing, uttering, or negotiating any such promissory or other note (not being such bank note as aforesaid), bill of exchange, draft, or undertaking in writing as aforesaid, shall forfeit and pay the sum of 20*l*.

Not to prohibit checks on bankers.

20. Provided always, that nothing herein contained shall extend to prohibit any draft or order drawn by any person on his banker, or on any person acting as such banker, for the payment of money held by such banker or person to the use of the person by whom such draft or order shall be drawn.

Mode of recovering penalties.

21. That all pecuniary penalties under this act may be sued or prosecuted for and recovered for the use of her Majesty, in the name of her Majesty's advocate general or solicitor general in Scotland, or of the solicitor of stamps and taxes in Scotland, or of any person authorized to sue or prosecute for the same, by writing under the hands of the commissioners of stamps and taxes, or in the name of any officer of stamp duties, by action of debt, bill, plaint, or information in the Court of Exchequer in Scotland, or, in respect of any penalty not exceeding 20*l*., by information or complaint before one or more justice or justices of the peace in Scotland, in such and the same manner as any other penalties imposed by any of the laws now in force relating to the duties under the management of the commissioners of stamps; and it shall be lawful in all cases for the commissioners of stamps and taxes, either before or after any proceedings commenced for recovery of any such penalty, to mitigate or compound any such penalty as the said commissioners shall think fit, and to stay any such proceedings after the same shall have been commenced, and whether judgment may have been obtained for such penalty or not, on payment of part only of any such penalty, with or without costs, or on payment only of the costs incurred in such proceedings, or of any part thereof, or on such other terms as such commissioners shall judge reasonable: provided always, that in no such proceeding aforesaid shall any essoign, protection, wager of law, nor more than one imparlance be

allowed; and all pecuniary penalties imposed by or incurred under this act, by whom or in whose name soever the same shall be sued or prosecuted for or recovered, shall go and be applied to the use of her Majesty, and shall be deemed to be and shall be accounted for as part of her Majesty's revenue arising from stamp duties, any thing in any act contained, or any law or usage, to the contrary in anywise notwithstanding: provided always, that it shall be lawful for the commissioners of stamps and taxes, at their discretion, to give all or any part of such penalties as rewards to any person or persons who shall have detected the offenders, or given information which may have led to their prosecution and conviction.

22. That the term "bank notes" used in this act shall extend and apply to all bills or notes for the payment of money to the bearer on demand, other than bills and notes of the Governor and Company of the Bank of England; and that the term "banker" shall extend and apply to all corporations, societies, partnerships, and persons, and every individual person carrying on the business of banking, whether by the issue of bank notes or otherwise; and that the word "person" used in this act shall include corporations; and that the word "coin" shall mean the coin of this realm; and that the singular number in this act shall include the plural, and the plural number the singular, except where there is any thing in the context repugnant to such construction; and that the masculine gender in this act shall include the feminine, except where there is anything in the context repugnant to such construction.

Interpre-  
tation of act.

### *Composition for Stamp Duties payable on Notes and Bills.*

16 & 17 VICT. c. 63 (a).

*An Act to repeal certain Stamp Duties, and to grant others in lieu thereof; to give relief with respect to the Stamp Duties on Newspapers and Supplements thereto; to repeal the Law on Advertisements, and otherwise to amend the Laws relating to Stamp Duties.* [4th August, 1853.]

7. And whereas, under and by virtue of certain acts of parliament now in force, the Governor and Company of the Bank of Scotland, and the Royal Bank of Scotland, and the British Linen Company in Scotland, are respectively authorized and empowered to make and issue and re-issue their promissory notes payable to bearer on demand on unstamped paper,

Power to treasury to compound with bankers in Scotland for the stamp duties on their promissory notes.

(a) 33 & 34 Vict. c. 99, s. 2, repeals the whole of this act except the above section 7.

giving security, and keeping and producing true accounts of all the notes so issued by them respectively, and accounting for and paying the stamp duties payable in respect of such notes: and whereas it is expedient to authorize and empower the commissioners of her Majesty's treasury to compound with the said banks, as well as all bankers in Scotland, for the stamp duties on their promissory notes payable to bearer on demand as well as for stamps payable on their bills of exchange: it shall be lawful for the commissioners of her Majesty's treasury for the time being, or any three of them, and they are hereby authorized and empowered to compound and agree with the said Governor and Company of the Bank of Scotland, the Royal Bank of Scotland, and the British Linen Company in Scotland, and all or any other bankers in Scotland, or elsewhere, respectively, for a composition in lieu of the stamp duties payable on the promissory notes of the said banks and bankers respectively payable to the bearer on demand, as well as for stamps payable on their bills of exchange; and such composition shall be made on such terms and conditions, and with such security for the payment of the same, and for keeping, producing, and rendering of such accounts, as the said last-mentioned commissioners may deem to be proper in that behalf; and upon such composition being entered into by such banks and bankers respectively, it shall be lawful for them to issue and re-issue all notes and to draw all such bills for which such composition shall have been made upon unstamped paper, anything in any act contained to the contrary notwithstanding.

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*Lien or Right of Retention over Shares in Joint Stock Banks,  
and signing Bills and Notes.*

17 & 18 VICT. c. 73.

*An Act to amend the Acts for the Regulation of Joint Stock  
Banks in Scotland.* [31st July, 1854.]

WHEREAS an act passed in the 8th year of the reign of her present Majesty, intituled "An Act to regulate joint stock banks in England:" and whereas the said act was extended to Scotland and Ireland by an act passed in the 9th and 10th years in the reign of her Majesty, intituled "An Act to regulate joint stock banks in Scotland and Ireland:" and whereas it is expedient that the recited acts should be amended in certain of the provisions thereof, in so far as the same apply to Scotland: be it enacted, &c., as follows:

7 & 8 Vict.  
c. 113.

9 & 10 Vict.  
c. 75.

1. No clause directed by the said acts to be inserted in the deed of partnership of any joint stock banking company in Scotland to be executed previous to such company being incorporated under the recited acts shall take away or impair the right of retention or lien which, in virtue of the common law of Scotland, such company has or may be entitled to exercise over the shares of its partners, for or in respect of any debt or liability incurred or obligation undertaken by them to the company.

Right of retention or lien over shares of partners not to be affected.

2. Provided, that as often as the company may, in virtue of their right of lien or retention acquire any shares in the company's stock, they shall be bound to sell the same within six months after the same shall have been so acquired, and in such manner as is by the said first-recited act provided for the sale of forfeited shares: and the company shall be bound to account to the party or parties interested in such shares, or to their creditors, or heirs, or executors, for the balance of the price or prices which may have been realized by such sale, after paying the debt due to the company, and the expenses incurred by them in securing their debt and selling the shares.

The company to sell shares acquired in virtue of right of lien.

3. In such deed of partnership there shall be inserted provisions regulating the manner in which bills of exchange or promissory notes of the company may be made, accepted or indorsed, and it shall not be necessary that such bills of exchange or promissory notes be signed in the manner prescribed by the first-recited act.

Provision to be made as to signing bills and notes.

### *Joint Stock Banks Incorporation by Letters Patent.*

19 VICT. c. 3.

*An Act to extend the Period for which her Majesty may grant Letters Patent of Incorporation to Joint Stock Banks in Scotland existing before the Act of 1846.*

[7th March, 1846.]

WHEREAS, under the provisions of the act of the 9th and 10th years of her present Majesty, chapter 75 (whereby the act of the 7th and 8th years of her Majesty, chapter 113, was extended to joint stock banks in Scotland), her Majesty, with the advice of her privy council, is empowered to grant letters patent of incorporation to any company of more than six persons who were carrying on the business of bankers in Scotland on or before the 9th day of August, 1845, upon the terms and in manner in the said acts mentioned or referred to, but only for a term of years not exceeding 20 years: and

whereas it is expedient that her Majesty should be empowered in certain cases to grant such letters patent of incorporation for a longer period : now be it enacted, &c., as follows :

Extending period for which her Majesty may grant letters patent of incorporation to certain joint stock banks in Scotland.

1. That notwithstanding anything in the said acts contained, it shall be lawful for her Majesty to grant letters patent of incorporation under the said acts to any company of more than six persons in Scotland who were carrying on the business of bankers before the said 9th day of August, 1845, either for a term of years or in perpetuity, but so that the same shall be liable to be dealt with by or under the provisions of any future acts of parliament in every respect as if this act had not been passed.

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### III. RELATING TO IRELAND EXCLUSIVELY.

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#### *Cancellation of unused Bank Notes.*

55 GEO. 3, c. 100.

*An Act to provide for the Collection and Management of Stamp Duties payable on Bills of Exchange, Promissory Notes, Receipts, and Game Certificates, in Ireland (a).*

[22nd June, 1815.]

Composition for stamps on notes of Bank of Ireland.

19. And be it further enacted, that all bank notes and bank post bills, which shall be issued by the Governor and Company of the Bank of Ireland, shall be exempt from the stamp duties which may from time to time be charged thereon respectively (unless otherwise expressly provided in the act or acts charging the same), from every 25th day of March for one whole year next following ; provided the governor and company of the said bank shall on the said 25th day of March respectively have paid into his Majesty's treasury in Ireland, such sum of money as shall have been from time to time agreed upon by and between the said governor and company, and the lord high treasurer of Ireland, or the commissioners for executing the office of lord high treasurer of Ireland, as a compensation for and to be in lieu of and in full satisfaction for all stamp duties payable upon all notes and bills to be

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(a) By the Inland Revenue Repeal Act, 1870, (33 & 34 Vict. c. 99), the whole of the act is repealed except sections 19 and 20, which are here printed. By one of the repealed sections, sect. 3, bankers issuing notes were bound to register the name of the firm and of the partners in the bank at the stamp office in Dublin.

issued by the said bank during the year next ensuing respectively, and that any such composition heretofore made shall be in force according to the terms thereof, as if this act had not passed.

20. And be it further enacted, that although any bank or banker's note or notes shall be signed or otherwise executed by any banker or bankers duly registered in manner hereinbefore mentioned, or by his or their servant or servants, yet if the same shall remain in a book and be part of the leaves, or any one leaf thereof, and not cut or separated therefrom, then and in every such case if such note or notes remaining in such book shall be brought to the stamp office in Dublin, it shall and may be lawful to and for the said commissioners of stamps, or any of them, or any officer by them duly authorized, and they are hereby required to cancel the stamps thereon respectively, and to mark or stamp any vellum, parchment, or paper which shall be brought to the said office by the person or persons so bringing such note or notes with any marks or stamps which he or they may require, on such person or persons paying the difference or price (if any) between the stamps so cancelled, and the stamps or marks so required to be marked or stamped on the vellum, parchment, or paper so brought to the said stamp office.

Cancelling  
notes and  
books of  
registered  
bankers.

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*The Bank of Ireland Restriction Act.*

1 & 2 GEO. 4, c. 72.

*An Act to establish an Agreement with the Governor and Company of the Bank of Ireland for advancing the Sum of 500,000*l.* Irish Currency; and to empower the said Governor and Company to enlarge the Capital Stock or Fund of the said Bank to 3,000,000*l.* (a).*

[2nd July, 1821.]

6. And be it further enacted, that from and after the passing of this act, it shall and may be lawful for any number of persons in Ireland, united or to be united in societies or partnerships, and residing and having their establishments or houses of business at any place not less than 50 miles distant from Dublin, to borrow, owe, or take up any sum or sums of money on their bills or notes payable on demand, and to

Persons in  
partnerships  
residing 50  
miles from  
Dublin may  
borrow any  
sum of money  
on bills and  
notes payable

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(a) By the Statute Law Revision Act, 1873, (36 & 37 Vict. c. 91), sections 1, 2 and 8 are repealed; the remaining sections, 3, 4 and 5, relating to the capital of the Bank of Ireland, and the receipt of its notes in payment of the public debt, are not printed.

on demand,  
without being  
liable to  
penalty.

21 & 22 Geo.  
3 (I.).

No other  
privilege  
to be granted  
to partner-  
ships.

make and issue such notes or bills accordingly, payable on demand, at any place in Ireland exceeding the distance of 50 miles from Dublin, all the individuals composing such societies or copartnerships being liable and responsible for the due payment of such bills and notes; and such persons shall not be subject or liable to any penalty for the making or issuing such bills or notes; anything in an act made in the parliament of Ireland, holden in the 21st and 22nd years of the reign of his late Majesty King George the Third, intituled "An Act for establishing a bank by the name of the Governor and Company of the Bank of Ireland," to the contrary notwithstanding.

7. Provided always, that no further or other power, privilege, or authority shall, previous to the said 1st day of January, 1838, nor until after payment to the said governor and company of all sum and sums of money which now are or hereafter shall or may become due to them from government, be granted to any copartnership or society of persons whatsoever, contrary to the laws now in force for establishing and regulating the bank of Ireland, save and except the power of enabling such societies and copartnerships as aforesaid, residing and carrying on their business not less than 50 miles from Dublin, to sue and be sued in the name of a public officer, should parliament hereafter think fit to grant such a power.

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### *The Banking Copartnerships Regulation Act.*

6 GEO. 4, c. 42.

*An Act for the better Regulation of Copartnerships of certain Bankers in Ireland (a).* [10th June, 1825.]

1 & 2 Geo. 4,  
c. 72.

Societies of  
persons more  
than six in  
number may  
be bankers in  
Ireland at  
places 50  
miles from

2. And whereas an act was passed in the session of parliament holden in the 1st and 2nd years of his present Majesty's reign, intituled "An Act to establish an agreement with the Governor and Company of the Bank of Ireland, for advancing the sum of 500,000*l.* Irish currency; and to empower the said governor and company to increase the capital stock or fund of the said bank to three millions," and it is expedient that the said last-recited act should be altered and amended, be it further enacted, that from and after the passing of this act, it shall and may be lawful for any number of persons, united or to be united in any society or copartnership in Ireland, consisting of more than six in number, and not having the

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(a) The Statute Law Revision Act, 1873, (36 & 37 Vict. c. 91), repeals sects. 1, 4 and 8.

establishments or houses of business of such society or copartnership at any place or places less than 50 miles distant from Dublin, to carry on the trade and business of bankers, in like manner as copartnerships of bankers, consisting of not more than six in number, may lawfully do; and to borrow, owe, or take up any sum or sums of money on their bills or notes, payable on demand, or at any time after date, or after sight, and to make and issue such notes or bills accordingly at any place in Ireland, exceeding the distance of 50 miles from Dublin, all the individuals composing such societies or copartnerships being liable and responsible for the due payment of all such bills and notes, in manner hereinafter provided; anything contained in an act made in the parliament of Ireland, in the 21st and 22nd years of the reign of his late Majesty King George the Third, intituled "An Act for establishing a bank, by the name of the Governor and Company of the Bank of Ireland," or in the hereinbefore-recited act of the 1st and 2nd years of his present Majesty's reign, or in any other act or acts, or any law, usage or custom to the contrary in anywise notwithstanding.

3. That it shall and may be lawful for any such society or copartnership, from time to time to have, employ or appoint any agent or agents to do and transact, on behalf of any such society or copartnership, all such business, matters and things as such society or copartnership may lawfully do, and as are not contrary to any act or acts now in force, and to the provisions of this act.

5. Provided always, that nothing contained in this act or in any other act or acts shall extend or be construed to prevent any person or persons whatever, whether resident in Great Britain or Ireland, from being or becoming a member or members of any such society or copartnership in Ireland as aforesaid, or from being or becoming a subscriber and contributor, or subscribers and contributors, to the stock and capital of any such society or copartnership; and that any such society or copartnership which shall or may have been formed or begun to be formed under or by virtue of the provisions contained in the hereinbefore-recited acts of the 1st and 2nd years and the 5th year of the reign of his present Majesty, and of which any person or persons shall be or shall become a member or members, or to which any such person or persons shall become a subscriber or subscribers or contributor or contributors as aforesaid, shall be or be deemed and taken, to all intents and purposes, to be a society or copartnership of persons united in Ireland, within the true intent and meaning of this act; any thing in this act or in any other act or acts of parliament, or any law, usage, or custom to the contrary notwithstanding.

Dublin, and issue bills and notes, every member being responsible.

Notwithstanding 21 & 22 Geo. 3, c. 16 (I.) or 1 & 2 Geo. 4, c. 72.

Societies or copartnerships may appoint agents.

Persons resident in Great Britain, &c. may be members of such copartnerships.

Such banking partnerships shall deliver and register, at the stamp office in Dublin, an account of the names of the firm, the several partners therein, and the public officers thereof.

6. That between the 25th day of March in any year, and the 25th day of March following, an account or return shall be made out by the secretary or some other officer of every such society or copartnership, and shall be signed by such secretary or other officer, and shall be verified by the oath of such officer taken before any justice of the peace (and which oath any justice of the peace is hereby authorized and empowered to administer), according to the form contained in the Schedule No. 1 (a) to this act annexed; and in every such account or return there shall be set forth the true name or firm of such society or copartnership, and also the names and places of abode of all the partners concerned or engaged in such society or copartnership, as the same respectively appear on the books of such society or copartnership, and the firm and name of and every bank or banks established or to be established by such society or copartnership, and also the names of two or more individuals of such society or partnership who shall be resident in Ireland, each and every of whom shall respectively be considered as a public officer of such society or copartnership, and the title of office or other description of

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(a) No. 1.

RETURN or account, to be entered at the Stamp Office in Dublin, in pursuance of an act passed in the sixth year of the reign of King George the Fourth, intituled [*here insert the title of this act*], viz.

Firm or name of the banking society or copartnership, viz. [*set forth the firm or name.*]

Names and places of abode of all the partners concerned or engaged in such society or copartnership, viz. [*set forth all the names and places of abode.*]

Names and places of the bank or banks established by such society or copartnership, viz. [*set forth all the names and places.*]

Names and descriptions of the public officers of the said banking society or copartnership, viz. [*set forth all the names and descriptions.*]

Names of the several towns and places where the bills or notes of the said banking society or copartnership are to be issued by the said society or copartnership, or their agent or agents, viz. [*set forth the names of all the towns and places.*]

A. B. of secretary [*or other officer, describing the office*] of the above society or copartnership, maketh oath and saith, that the above doth contain the name, style and firm of the above society or copartnership, and the names and places of abode of the several members thereof, and of the banks established by the said society or copartnership, and the names, titles and descriptions of the public officers thereof, and the names of the towns and places where the notes of the said society or copartnership are to be issued, as the same respectively appear in the books of the said society or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me, the day of  
at in the county of

C. D. justice of the peace in and  
for the said county.

every such individual respectively, in the name of any one of whom such society or copartnership shall sue and be sued, as hereinafter provided, and also the name of every town and place where any such bills or notes shall be issued by any such society or copartnership, or by any agent or agents of any such society or copartnership; and every such account or return shall be produced at the stamp office in Dublin and an entry and registry thereof shall be made in a book or books to be kept for that purpose at the said stamp office, by some person or persons to be appointed for that purpose by the commissioners of stamp duties; and if, after the passing of this act, any such society or copartnership shall omit or neglect to deliver at the stamp office in Dublin such account and return as is by this act required, such society or copartnership shall, for each and every week they shall so neglect to make such account and return, forfeit the sum of 500*l*.

7. That whenever any entry and registry of the firm or name of any such society or copartnership shall be made at the stamp office, in manner aforesaid, at any time between the 25th day of March in any year, and the 25th day of March following, a certificate of such entry or registry shall be granted by the said commissioners of stamps, or by some person deputed and authorized by the said commissioners for that purpose, to the society or copartnership by or on whose behalf such entry or registry shall be made, and such certificate shall be written on vellum, parchment, or paper, duly stamped with the stamp required by law for certificates to be taken out yearly by any banker or bankers in Ireland; and a separate and distinct certificate on a separate piece of vellum, parchment, or paper, with a separate and distinct stamp, shall be granted for and in respect of every town and place where any such bill or note shall be issued by any such society or copartnership, or by any agent or agents, for or on account of such society or copartnership; and every such certificate shall specify the proper firm, style, title, or name of such society or copartnership, under which such notes are to be issued, and also the name of the town or place, or the several towns or places where such notes are to be issued, and the christian and surname and place of abode and title of office or other description of the several individuals named respectively, as the public officers of such society or copartnership in the name of any one of whom such society or copartnership shall sue and be sued; and every certificate shall be dated on the day on which the same shall be granted, and shall have effect and continue in force from the day of the date thereof, until the 25th day of March following, both inclusive, and no longer, and shall be sufficient evidence of the appointment and authority of such public officers respectively.

Stamp office shall give certificates of such entry, to be in force to 25th March ensuing.

See *post*, p. 715, 9 Geo. 4, c. 80, s. 16.

Account and registry of new officers or members in the course of any year may be made without further certificate.

9. Provided also, and be it enacted, that it shall and may be lawful for the secretary or other officer of any such society or copartnership, as occasion may require, from time to time, in the year ending on the 25th day of March, 1826, and in any succeeding year, without obtaining any further certificate for such year, and without payment of any further stamp duty for such year, to make out upon oath, in manner hereinbefore directed, an account or return of the name or names of any new or additional public officer or public officers, and also the name or names of any person or persons who may have ceased to be members of such society or copartnership, and also the name or names of any person or persons who may have become a member or members of such society or copartnership, either in addition to or in the place or stead of any former member or members, in the form expressed in the schedule hereunto annexed, marked No. 2 (a); and such accounts or returns shall be from time to time produced and entered or registered at the stamp office in Dublin, in like manner as is hereinbefore required with respect to the original account or return to be made for any such year, in behalf of such society or copartnership.

Societies or partnerships shall sue and be sued in the name of their public officers.

10. That all actions and suits, and also all petitions to found any sequestration, or any commission of bankruptcy, against any person or persons who may be at any time indebted to any such society or copartnership, and all proceedings at law

(a) No. 2.

RETURN or account, to be entered at the Stamp Office in Dublin, on behalf of [*name the society or copartnership*], in pursuance of an act passed in the sixth year of the reign of King George the Fourth, intituled [*insert the title of this act*], viz.

Names of any and every new or additional public officer of the said society or copartnership, viz.

A. B. in the room of C. D. deceased or removed, [*as the case may be*], [*set forth every name.*]

Names of any and every person who may have ceased to be a member of such society or copartnership, viz. [*set forth every name.*]

Names of any and every person who may have become a new member of such society or copartnership, [*set forth every name.*]

A. B. of [*secretary or other officer*] of the above-named society or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of any and every person who hath become or been appointed a public officer of the above society or copartnership, and also the name and place of abode of any and every person who hath ceased to be a member of the said society or copartnership, and of any and every person who hath become a member of the said society or copartnership since the registry of the said society or copartnership on the \_\_\_\_\_ day of \_\_\_\_\_ last, as the same respectively appear on the books of the said society or copartnership, and to the best of the information, knowledge, and belief of this deponent.

Sworn, &c.

or in equity under any sequestration or commission of bankruptcy, and all other proceedings at law and in equity, to be commenced or instituted for or on behalf of any such society or copartnership, against any person or persons, bodies politic or corporate, or others, whether members of such society or copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such society or copartnership, or for any other matter relating to the concerns of such society or copartnership, shall and lawfully may, from and after the passing of this act, be commenced or instituted and prosecuted in the name of any one of the public officers nominated as aforesaid for the time being of such society or copartnership, as the nominal plaintiff or petitioner for and on behalf of such society or copartnership; and that all actions or suits and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such society or copartnership or otherwise, against such society or copartnership, shall and lawfully may be commenced, instituted, and prosecuted against any one of the public officers nominated as aforesaid for the time being of such society or copartnership, as the nominal defendant for and on behalf of such society or copartnership; and that all indictments, informations, and prosecutions, by or on behalf of such society or copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to such society or copartnership, or for any fraud, forgery, crime, or offence committed against or with intent to injure or defraud such society or copartnership, shall and lawfully may be had, preferred, and carried on in the name of any one of the public officers nominated as aforesaid for the time being of such society or copartnership; and that in all indictments and informations to be had or preferred by or on behalf of such society or copartnership, against any person or persons whomsoever, notwithstanding such person or persons may happen to be a member or members of such society or copartnership, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such society or copartnership, to be the money, goods, effects, bills, notes, securities, or other property of any one of the public officers nominated as aforesaid for the time being of such society or copartnership; and that any forgery, fraud, crime, or other offence committed against or with intent to injure or defraud such society or copartnership, shall and lawfully may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against or with intent to injure or defraud any one of the public officers nominated as aforesaid for the time being of such society or copartnership, and any

offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence; and that in all other allegations, indictments, informations or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing such society or copartnership, it shall and may be lawful and sufficient to state the name of any one of the public officers nominated as aforesaid for the time being of such society or copartnership; and the death, resignation, removal, or any act of such public officer shall not abate or prejudice any such action, suit, indictment, information, prosecution, or other proceeding commenced against or by or on behalf of such society or copartnership, but the same may be continued, prosecuted, and carried on in the name of any other of the public officers of such society or copartnership for the time being.

Not more than one action for the recovery of one demand.

11. That no person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such society or corporation, shall bring more than one action or suit in respect of such demand; and the proceedings in any action or suit by or against any one of the public officers nominated as aforesaid for the time being of such society or copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same demand, by or against any other of the public officers of such society or copartnership.

Parties obtaining judgment in Ireland may authorize the acknowledgment of like judgment in Great Britain.

12. That it shall and may be lawful for any person or persons obtaining a judgment in any of his Majesty's courts of record in Dublin, against any such public officer for the time being of any such society or copartnership; and such person or persons is and are hereby empowered, by warrant under hand and seal, reciting the effect of such judgment, to authorize any attorney or attornies in Great Britain to appear for such public officer in an action of debt to be brought in any court of record in Great Britain against such public officer, at the suit of the person or persons obtaining such judgment in Ireland, and thereupon to confess judgment forthwith in such action for a sum equal to the sum for which judgment shall have been so obtained in Ireland, together with the costs of such proceeding; and such judgment shall be thereupon entered up of record in the said court in Great Britain against such public officer, and shall have the like effect in Great Britain against the members of such society or copartnership as the original judgment so obtained in Ireland.

And in like manner parties obtaining judgment in Great

13. That it shall and may be lawful for any person or persons obtaining a judgment in any court of law in Great Britain against any such public officer for the time being of any such society or copartnership in Ireland, and such person

or persons is and are hereby empowered, by warrant under hand and seal, reciting the effect of such judgment, to authorize any attorney or attorneys in Ireland to appear for such public officer in an action of debt, to be brought in any court of record in Ireland against such public officer, at the suit of the person or persons obtaining such judgment in Great Britain, for a sum equal to the sum for which judgment shall have been so obtained in Great Britain, together with the costs of such proceeding; and such judgment shall be thereupon entered up of record in the said court in Ireland against such public officer, and shall have the same effect in Ireland against the members of such society or copartnership as the original judgment so obtained in Great Britain.

14. That all and every decree or decrees, order or orders, made or pronounced in any suit or proceeding in any court of equity, against any public officer of any such society or copartnership, shall have the like effect and operation upon and against the property and funds of such society or copartnership, and upon and against the persons and property of every member thereof, as if all the members of such society or copartnership were parties before the court to and in any such suit or proceeding; and it shall and may be lawful for any court in which such order or decree shall have been made, to cause such order and decree to be enforced against any, every or any member of such society or copartnership, in like manner as if every member of such society or copartnership were parties before such court, to and in such suit or proceeding.

15. That an act passed in the 41st year of the reign of King George the Third, intituled "An Act for the more speedy and effectual recovery of debts due to his Majesty, his heirs and successors, in right of the crown of the united kingdom of Great Britain and Ireland, and for the better administration of justice within the same;" and also an act passed in the 5th year of his present Majesty, intituled "An Act to amend an act of the 41st year of the reign of his late Majesty King George the Third, for the more speedy and effectual recovery of debts due to his Majesty, his heirs and successors, in right of the crown of the united kingdom of Great Britain and Ireland, and for the better administration of justice within the same," shall extend to all suits, matters and proceedings in any court of equity in England or Ireland, in which any public officer of such society or copartnership shall be a party, in like manner as if all the members of such society or copartnership were parties before the court in such suits, matters and proceedings.

16. That it shall and may be lawful for any person or persons obtaining any judgment in any court of law, or

Britain may proceed thereon in Ireland.

Decrees and orders of a court of equity against the public officer to take effect against the society or copartnership.

41 Geo. 3 and 5 Geo. 4, to extend to proceedings to which the public officer shall be a party.

Decrees, judgments and orders to

be registered, and have effect in Scotland.

decree or order in any court of equity, against any public officer of any such society or copartnership, to produce an office copy of such judgment, decree or order, under the seal of the court in which judgment, decree or order shall have been obtained, to one of the principal clerks in the Court of Session in Scotland, or his deputy, for registration there, and such judgment, decree or order shall thereupon be registrable and registered there, in like manner as a bond executed according to the law of Scotland, with a clause of registration therein contained, and execution may and shall pass upon a decree to be interponed thereto, in like manner as execution passes upon a decree interponed to such bond, and shall have the like effect upon and against all and every or any of the members of such society or copartnership, as if such members had executed such bond.

Judgments against such public officer in such action shall operate against the society or copartnership.

17. That all and every judgment and judgments which shall at any time after the passing of this act be had or recovered or entered up as aforesaid in any action, suit or proceedings in law or equity against any public officer of any such society or copartnership, shall have the like effect and operation upon and against the property of such society or copartnership, and upon and against the property of every member thereof, as if such judgment or judgments had been recovered or obtained against such society or copartnership themselves; and that the bankruptcy, insolvency or stopping payment of any such public officer for the time being of such society or copartnership in his individual character or capacity, shall not be nor be construed to be the bankruptcy, insolvency, or stopping payment of such society or copartnership, and that such society or copartnership, and every member thereof, and the capital stock and effects of such society or copartnership, and the effects of every member of such society or copartnership, shall in all cases, notwithstanding the bankruptcy, insolvency or stopping payment of any such public officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such society or copartnership, as if no such bankruptcy, insolvency or stopping payment of such public officer of such society or copartnership had happened or taken place.

Execution upon judgment in any such action may be issued against any member of the society or copartnership.

18. That execution upon any judgment in any action obtained against any public officer for the time being, of any such society or copartnership, whether as plaintiff or defendant, may be issued against any member or members for the time being of such society or copartnership; and that in case any such execution against any member or members for the time being of such society or copartnership shall be ineffectual for obtaining payment and satisfaction of the amount of such judgment, it shall be lawful for the party or parties so having

obtained judgment against such public officer for the time being, to issue execution against any person or persons who was or were a member or members of such society or copartnership at the time when the contract or contracts, or engagement or engagements on which such judgment may have been obtained, was or were entered into: provided always, that no such execution as last mentioned shall be issued without leave first granted, on motion in open court, by the court in which such judgment shall have been obtained, and which motion shall be made on notice to the person or persons sought to be charged, nor after the expiration of three years next after any such person or persons shall have ceased to be a member or members of such society or copartnership.

19. Provided always, and be it enacted, that every such public officer, in whose name any such suit or action shall have been commenced, prosecuted or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs, and charges, without deduction, which any such officer or person may have incurred by reason of such execution, out of the funds of such society or copartnership, or in failure thereof, by contribution from the other members of such society or copartnership, as in the ordinary cases of copartnerships.

20. That if any person or persons being a member or members of any copartnership of bankers in Ireland, shall steal or embezzle any money, goods, effects, bills, notes, securities or other property of or belonging to such society or copartnership, or shall commit any fraud, forgery, crime, or offence against or with intent to injure or defraud such society or copartnership, such member or members shall be liable to indictment, information prosecution, or other proceeding, in the name of any one of the public officers nominated for the time being of such society or copartnership, for every such fraud, forgery, crime, or offence, and may thereupon be lawfully convicted, as if such person or persons had not been, or was or were not a member or members of such society or copartnership; any law, usage, or custom to the contrary notwithstanding.

21. That this act and the powers and provisions herein contained shall extend and be at all times construed to extend to any society or copartnership for banking in Ireland, consisting of more than six persons in number, and to the members thereof for the time being, during the continuance of such society or copartnership, whether the same do or shall consist of all or some only of the persons who originally were, or at the time of the passing of this act may have subscribed to, or

Officer, &c. in such cases indemnified.

Members may be indicted for fraud on societies or copartnerships.

Act extended to existing partners for the time being.

may be members of any such society or copartnership, or of all or some only of those persons, together with some other persons, or entirely of some other persons, all of whom became or may become members of such society or copartnership, at any time after the original institution thereof, or subsequent to the passing of this act.

Members of societies or copartnerships may transfer shares, and such transfers shall be registered at the stamp office ;

22. That it shall and may be lawful for any and every member of any and every such society or copartnership, their respective executors, administrators, and assigns, to sell and transfer any share or shares, or portion or portions of, or the entire stock or interest which any such member respectively is or may be respectively entitled to or possessed of in such society or copartnership, and the property and funds thereof, subject to such regulations and under such restrictions as may be required by the constitution of such society or copartnership ; and whenever any such sale and transfer shall be made, a return or account thereof, in the form set forth in the schedule, marked No. 3 (a), to this act annexed, shall be made upon oath, in manner hereinbefore directed, by the secretary or other officer of such society or copartnership, and shall be from time to time produced, entered, and registered at the stamp office in Dublin, in the book containing the then last register of such society or copartnership ; and the person or persons to whom such transfer shall be made shall be and stand, in all respects and to all intents and purposes, in the place and stead of the person or persons making such transfer : provided always, that nothing herein contained shall be deemed, taken, or construed to discharge or release any member or members making any such transfer as aforesaid, of or from the being liable to or responsible for the due payment of the bills, notes, and other engagements of such society or copartnership, existing at the time of the entry or register of such transfer, or of or from any action, suit, judgment, or execution in respect of the same, according to the provisions of this act : provided always, that no such transfer as aforesaid shall take place without the consent of the

but not to affect their liability while members.

(a) No. 3.

RETURN or account, to be entered at the Stamp Office in Dublin, in behalf of [*name the society or copartnership*], in pursuance of an act passed in the sixth year of King George the Fourth, intituled [*insert the title of this act*].

C. D. of                      did on the                      day of                      assign                      shares in  
the said company to G. B. of

A. B. of                      secretary [*or other officer*] of the above society or copartnership, maketh oath and saith, that the assignment above mentioned has been duly made, as appears by the documents in the possession of the said

Sworn, &c.

directors for the time being of any such society or copartnership; nor shall any transfer be valid unless signed by one or more of such directors, as the court of directors for the time being of such society or copartnership may from time to time determine, in testimony of the court of directors having consented to such transfer.

23. That if any cashier or clerk of any banker or bankers, or of any society or copartnership or bankers, or of any merchant or merchants, or of any officer or officers intrusted with the receipt or custody of public money in Ireland, shall without the consent of such banker or bankers, or society or copartnership, or merchant or merchants, or officer or officers, embezzle or take away money, cash, notes, or securities for money to the value of 50*l.* sterling belonging to such banker or bankers, or society or copartnership, or merchant or merchants, or intrusted to the care of such officer or officers, with an intent to defraud such banker or bankers, or society or copartnership, or merchant or merchants, or officer or officers, such cashier or clerk shall, upon conviction thereof, be adjudged to be guilty of felony, and shall be transported for life or for any term of years as the court before whom such offender shall be convicted shall think fit to order and adjudge; and every person who shall receive such money, notes or securities for money, from such cashier or clerk, knowing them to be so taken away with intent to defraud such banker or bankers, or society or copartnership, or merchant or merchants, or officer or officers, shall be likewise adjudged to be guilty of felony, and shall be transported for life, or for any term of years as the court before whom such offender shall be convicted shall think fit to order and adjudge.

Clerks of  
bankers  
embezzling  
money, &c.,  
felony.

24. That every penalty, forfeiture, and sum of money to be forfeited under this act, by reason of any omission or neglect of any of the regulations hereinbefore enacted, may be sued for and recovered in any of his Majesty's courts of record at Dublin by any person, by action of debt, bill, plaint or information, provided such action be commenced within 12 calendar months next after such offence committed, in which action there shall not be any essoign, or wager of law, nor more than one imparlance allowed; and all sums to be recovered shall be applied, one moiety thereof to the use of the person who shall sue for the same, and the other moiety to the use of his Majesty, his heirs and successors.

Recovery of  
penalties.

25. And be it declared and enacted, that so much of an act made in the parliament of Ireland in the 19th and 20th years of the reign of his late Majesty King George the Third, intituled "An Act to explain an act, intituled 'An Act to prevent frauds committed by bankrupts,'" whereby it is enacted, that all mercantile companies or partnerships shall set

Irish Act  
19 & 20  
Geo. 3, c. 25,  
declared not  
to extend to  
bankers.

forth in their several invoices, bills of parcels, promissory notes and Custom House entries, the names of the several individuals of which such partnership or company doth consist, doth not and shall not be construed to extend to any society or copartnership of bankers in Ireland; any custom or usage to the contrary in anywise notwithstanding.

This act not to affect matters otherwise legal.

26. Provided always, that nothing in this act contained shall be construed to prevent any such society or copartnership from doing any act, matter or thing which, but for the express provision of this act, they would by law be entitled to do.

### *Bankers' Licences.*

9 GEO. 4, c. 80.

*An Act to enable Bankers in Ireland to issue certain unstamped Promissory Notes upon Payment of a Composition in lieu of the Stamp Duties thereon (a). [25th July, 1828.]*

Bankers in Ireland may issue certain promissory notes on unstamped paper.

WHEREAS it is expedient to permit all persons carrying on the business of bankers in Ireland to issue their promissory notes payable to bearer on demand on unstamped paper, upon payment of a composition in lieu of the stamp duties which would otherwise be payable upon such notes, and subject to the regulations hereinafter mentioned; be it therefore enacted, &c., that from and after the 1st day of September, 1828, it shall be lawful for any person or persons carrying on the business of a banker or bankers in Ireland, who shall have duly registered the firm of his or their house according to law, and who shall have obtained a licence and given security by bond in manner hereinafter mentioned, to make and issue on unstamped paper his or their promissory notes, for payment to the bearer on demand of any sum of money not exceeding the sum of 100*l*.

The commissioners of stamps or their officers may grant licences to issue unstamped promissory notes.

2. That it shall be lawful for any two or more of the commissioners of stamps, or any officer of stamps duly authorized by the said commissioners in that behalf, to grant licences to all persons carrying on the business of bankers in Ireland who shall have duly registered the firm of their house according to law, and who shall require such licences authorizing such persons to issue such promissory notes as aforesaid on unstamped paper; which said licences shall be and are hereby respectively charged with a stamp duty of 30*l*. for every such licence.

(a) The composition here payable is repealed by 5 & 6 Vict. c. 82, s. 1.

3. That a separate licence shall be taken out in respect of every town or place where any such unstamped promissory notes as aforesaid shall be issued: provided always, that no person or persons shall be obliged to take out more than four licences in all for any number of towns or places in Ireland; and in case any person or persons shall issue such unstamped notes as aforesaid at more than four different towns or places, then after taking out three distinct licences for three of such towns or places, such person or persons shall be entitled to have all the rest of such towns or places included in the fourth licence; and that if any person or persons, after having taken out four distinct licences under the authority of this act, shall begin to issue such unstamped notes as aforesaid at any other town or place not named in any of the said four licences, it shall not be necessary to include such last-mentioned town or place in any licence until the 24th day of March next following the beginning to issue thereat such notes as aforesaid.

Bankers to take out a separate licence for every place where unstamped notes shall be issued, but not to take out more than four licences for any number of such places.

4. That every licence granted under the authority of this act shall specify all the particulars required by law to be specified in the certificates to be taken out by persons in Ireland issuing promissory notes payable to bearer on demand, and allowed to be re-issued; and every such licence which shall be granted between the 24th day of March and the 25th day of April in any year, shall be dated on the 25th day of March; and every such licence which shall be granted at any other time, shall be dated on the day on which the same shall be granted; and every such licence shall (notwithstanding any alteration which may take place in any copartnership of persons to whom the same shall be granted) have effect and continue in force from the day of the date thereof until the 24th day of March then next following, both inclusive, and no longer.

Regulations respecting licences.

5. Provided always, that where any banker or bankers shall have taken out the certificate required by law for issuing promissory notes payable to bearer on demand at any town or place in Ireland, and during the period for which such certificate shall have been granted, shall be desirous of taking out a licence to issue at the same town or place unstamped promissory notes under the provisions of this act, it shall be lawful for the commissioners of stamps, or their officers, to cancel and allow as spoiled the stamp upon such certificate, and in lieu thereof to grant to such banker or bankers a licence under the authority of this act; and every such licence shall, during its continuance in force, also authorize the re-issuing of all promissory notes payable to the bearer on demand, which such banker or bankers may have previously issued on paper duly stamped, until the 24th day of March inclusive

Commissioners of stamps to cancel certificates taken out for issuing promissory notes payable to bearer on demand, and to grant licences under this act in lieu thereof.

then next following, provided such notes may so long be lawfully re-issued.

Bankers licensed under this act to issue all their promissory notes of payment of money to the bearer on demand on unstamped paper.

6. Provided always, that if any banker or bankers who shall take out a licence under the authority of this act, shall issue under the authority either of this or any other act, any unstamped promissory notes for payment of money to the bearer on demand, such banker or bankers shall, so long as he or they shall continue licensed as aforesaid, make and issue on unstamped paper all his or their promissory notes for payment of money to the bearer on demand, of whatever amount or value (not exceeding the sum of 100*l*.) such notes may be; and it shall not be lawful for such banker or bankers, during the period aforesaid, to issue, for the first time, any such promissory note as aforesaid on stamped paper.

Bankers issuing unstamped notes to give security by bond for the due performance of the conditions herein contained.

7. That before any licence shall be granted to any person or persons to issue any unstamped promissory notes under the authority of this act, such person or persons shall give security by bond to his Majesty, his heirs and successors, with a condition that if such person or persons do and shall from time to time enter or cause to be entered, in a book or books to be kept for that purpose, an account of all such unstamped promissory notes as he or they shall so as aforesaid issue, specifying the amount or value thereof respectively, and the several dates of the issuing thereof, and in like manner also a similar account of all such promissory notes as, having been issued as aforesaid, shall have been cancelled, and the dates of the cancelling thereof; and do and shall from time to time, when thereunto requested, produce and show such accounts to and permit the same to be examined and inspected by the said commissioners of stamps, or any officer of stamps appointed under the hands and seals of the said commissioners for that purpose; and also do and shall deliver to the said commissioners of stamps half-yearly (that is to say), within 14 days after the 1st day of January and the 1st day of July in every year, a just and true account in writing, verified upon the oaths or affirmations (which any justice of the peace is hereby empowered to administer), to the best of the knowledge and belief of such person or persons, and of his or their cashier, accountant or chief clerk, or of such of them as the said commissioners shall require, of the amount or value of all unstamped promissory notes issued under the provisions of this act in circulation, within the meaning of this act, on a given day, that is to say, on Saturday in every week, for the space of half-a-year prior to the half-yearly day immediately preceding the delivery of such account, together with the average amount or value of such promissory notes so in circulation according to such account; *and also do and shall pay or cause to be paid to the receiver general of stamp duties in Ireland, or*

*to some other person duly authorized by the commissioners of stamps to receive the same, as a composition for the duties which would otherwise have been payable for such promissory notes issued or in circulation during such half year, the sum of 1s. 6d. for every 100l., and also for the fractional part of 100l. of the said average amount or value of such notes in circulation, according to the true intent and meaning of this act; and on due performance thereof such bond shall be void, but otherwise the same shall be and remain in full force and virtue (a).*

8. That every unstamped promissory note issued under the provisions of this act shall, for the purpose of payment of duty, be deemed to be in circulation from the day of the issuing to the day of the cancelling thereof, both days inclusive, excepting nevertheless the period during which such note shall be in the hands of the banker or bankers who first issued the same, or by whom the same shall be expressed to be payable, or, in case of copartnerships of more than six persons, which shall be in the hands of the public officers of such copartnership.

For what period notes are to be deemed in circulation.

9. That in every bond to be given pursuant to the directions of this act, the person or persons intending to issue any such unstamped promissory notes as aforesaid, or such and so many of the said persons as the commissioners of stamps, or their proper officer in that behalf, shall require, shall be the obligors; and every such bond shall be taken in the sum of 100l., or in such larger sums as the said commissioners of stamps, or such officer as aforesaid, may judge to be the probable amount of the composition or duties that will be payable from such person or persons under or by virtue of this act during the period of one year; and it shall be lawful for the said commissioners, or such officer as aforesaid, to fix the time or times of payment of the said composition or duties, and to specify the same in the condition to every such bond; and every such bond may be required to be renewed from time to time, at the discretion of the said commissioners, or of such officer as aforesaid, and as often as the same shall be forfeited, or the parties to the same, or any of them, shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

Regulations respecting the bonds to be given pursuant to this act.

10. That if any alteration shall be made in any copartnership of persons who shall have given any such security by bond as by this act is directed, whether such alteration shall be caused by the death or retirement of one or more of the partners of the firm, or by the accession of any additional or new partner or partners, a fresh bond shall, within one calendar month after any such alteration, be given by the re-

Fresh bonds to be given on alterations of copartnerships.

(a) By 5 & 6 Vict. c. 82, s. 1, this composition duty is repealed.

maining partner or partners, or the persons composing the new copartnership, as the case may be, which bond shall be taken as a security for the duties which may be due and owing, or may become due and owing in respect of the unstamped promissory notes which shall have been issued by the persons composing the old copartnership, and which shall be in circulation at the time of such alteration, as well as for duties which shall or may be or become due or owing in respect of the unstamped promissory notes issued or to be issued by the persons composing the new copartnership; provided that no such fresh bond shall be rendered necessary by any such alteration as aforesaid in any copartnership of persons exceeding six in number, but that the bonds to be given by such last-mentioned copartnerships shall be taken as securities for all the duties they may incur so long as they shall exist, or the persons composing the same or any of them shall carry on business in copartnership together, or with any other person or persons, notwithstanding any alteration in such copartnership; saving always the power of the said commissioners of stamps to require a new bond in any case where they shall deem it necessary for better securing the payment of the said duties.

Penalty on bankers refusing to renew their bonds.

11. That if any person or persons, who shall have given security by bond to his Majesty in the manner hereinbefore directed, shall refuse or neglect, for the space of one calendar month, to renew such bond when forfeited, and as often as the same is by this act required to be renewed, such person or persons so offending shall for every such offence forfeit and pay the sum of 100*l*.

This act not to exempt from penalties any persons issuing unstamped notes not in accordance herewith.

12. Provided always, that nothing in this act contained shall extend or be construed to extend to exempt or relieve, from the forfeitures or penalties imposed by any act or acts now in force upon persons issuing promissory notes not duly stamped as the law requires, any person or persons who, under any colour or pretence whatsoever, shall issue any unstamped promissory note, unless such person or persons shall be duly licensed to issue such promissory note under the provisions of this act, and such note shall be drawn and issued in strict accordance with the regulations and restrictions herein contained.

Penalties how and by whom to be recovered.

13. That all pecuniary forfeitures and penalties which may be incurred under any of the provisions of this act, shall be recovered for use of his Majesty, his heirs and successors, in any of his Majesty's courts of record, by action of debt, bill, plaint, or information, in the name of his Majesty's attorney or solicitor-general in Ireland.

Not to affect the privileges of the Bank of Ireland.

14. Provided always, that nothing in this act contained shall extend or be construed to extend to prejudice, alter, or

affect any of the rights, powers, or privileges of the Governor and Company of the Bank of Ireland.

15. [Commissioners of stamps to cancel re-issuable promissory note stamps rendered unnecessary by the act, and to repay the amount, if application made within six calendar months after passing of the act; section exhausted or expired.]

16. And whereas by an act passed in the 6th year of the reign of his present Majesty, intituled "An Act for the better regulation of copartnerships of certain bankers in Ireland," any certificate granted by the commissioners of stamps in Ireland, to any society or copartnership of bankers in Ireland exceeding six in number, of the registry of the firm and name of such society, is liable to the stamp duty payable by law on certificates to be taken out yearly by any banker or bankers in Ireland, that is to say, a stamp duty of 30*l.*: and whereas it is provided by the said recited act, that a separate and distinct certificate, with a separate and distinct stamp, shall be granted for and in respect of every town or place where any such bills or notes as in the said act are mentioned shall be issued by any such society or copartnership: and whereas it is expedient that no such society or copartnership should be required to take out more than four certificates in any one year, although it should issue such bills or notes as aforesaid at more than four towns or places in Ireland; be it therefore further enacted, that no society or copartnership of bankers in Ireland exceeding six in number, and carrying on the trade or business of bankers under the authority of the said recited act, shall be obliged to take out more than four certificates in any one year of the entry and registry of the firm or name of such society or copartnership; and in case any such society or copartnership shall issue such bills or notes as aforesaid, by themselves or their agents, at more than four different towns or places in Ireland, then after taking out three distinct certificates for three of such towns or places, such society or copartnership shall be entitled to have all the remainder of such towns or places included in a fourth certificate; anything in the said act of the sixth year of the reign of his present Majesty to the contrary notwithstanding.

17. That every certificate which hath been or shall at any time hereafter be taken out by any such last-mentioned society or copartnership as aforesaid, shall continue in force, for the issuing of such bills and notes as aforesaid at the town or place or the several towns or places therein named, until the 25th day of March next following the date of such certificate, notwithstanding any fresh entry or registry of the name or firm of such society or copartnership; and that if any fresh entry or registry shall be made from any cause whatever, after any such society or copartnership shall have taken out

6 Geo. 4, c. 42.

No society or copartnership of bankers shall be obliged to take out more than four certificates in one year.

Certificates to continue in force notwithstanding any fresh registry.

four such distinct certificates as aforesaid, such society or co-partnership shall not be required to take out any further certificate, in respect of any town or place not included in any of such four certificates, until the 24th day of March next following such fresh entry or registry.

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*Bank Notes payable where issued.*

9 GEO. 4, c. 81.

*An Act for making Promissory Notes payable, issued by Banks, Banking Companies, or Bankers, in Ireland, at the Places where they are issued.* [25th July, 1828.]

No banker in Ireland to issue notes which shall not express to be payable at the place where issued.

Notes issued contrary hereto shall be valid against the party issuing; who shall also be liable in double the amount.

WHEREAS divers banks, banking companies, and bankers, in Ireland, have made and issued promissory notes, without making the same payable in coin of the realm at the several places respectively where such notes have been issued or re-issued: and whereas it is expedient that in future all such promissory notes, and all bank post bills issued by such banks, banking companies, or bankers, should be made payable at the places where the same shall be issued or re-issued; be it therefore enacted, &c., that from and after the 1st day of April, 1829, no bank, banking company, or banker, in Ireland, shall, by themselves, or by any agent or agents, partner or partners, or other person or persons whomsoever on their or his behalf, or on their or his account, make, issue, or re-issue, in any place in Ireland where such bank, banking company, or banker shall have any house or establishment for business, or any authorized resident agent or agents, any promissory note or bank post bill of any denomination whatsoever, being or purporting to be the note or notes, bank post bill or bank post bills of the bank, banking company, or banker, making, issuing, or re-issuing the same, which shall not be payable at the places respectively where the same shall be made, issued, or re-issued by or on behalf of such bank, banking company, or banker; and in every such note the place where the same shall have been issued or re-issued shall be expressly mentioned: provided nevertheless, that if any such promissory note or bank post bill shall be issued or re-issued contrary to the provisions of this act, the same shall nevertheless not only be valid against the bank, banking company, or banker issuing or re-issuing the same by any of the ways or means aforesaid, but such bank, banking company, or banker, shall be liable and bound to pay, in the lawful coin of the realm, double the amount of the sum specified in each such note or bank post bill (to be sued for and recovered by the holder

thereof in any of his Majesty's courts for the recovery of debts in Ireland, by action of debt, bill, plaint, or information), either at the place where the same shall have been issued or re-issued by or on behalf of such bank, banking company, or banker, or at any other place where such bank, banking company, or banker shall have any house or establishment for business, notwithstanding such note or bank post bill shall not be expressed to be so payable, or shall be or expressed to be otherwise payable: provided always, that nothing herein contained shall extend to prevent any such promissory note or bank post bill from being made payable at several places, if one of such places shall be the bank or place where the same shall be so issued as aforesaid.

Not to prevent notes being made payable at several places.

### *Banking Copartnerships Regulation Amendment Act.*

11 GEO. 4 & 1 WILL. 4, c. 32.

*An Act to explain Two Acts of His present Majesty, for establishing an Agreement with the Governor and Company of the Bank of Ireland, for advancing 500,000l., Irish Currency, and for the better Regulation of Copartnerships of certain Bankers in Ireland (a).* [16th July, 1830.]

WHEREAS by an act passed in the parliament in Ireland in the 21st and 22nd years of the reign of his late Majesty King George the Third, intituled "An Act for establishing a bank by the name of the Governor and Company of the Bank of Ireland," it was amongst other things enacted, that from and after the passing of the said act it should not be lawful for any body politic or corporate, erected or to be erected, other than the corporation thereby intended to be created into a national bank, or for any other persons whatsoever united or to be united in covenants or partnerships exceeding the number of six persons, to borrow, owe, or take up any sum or sums of money on their bills or notes payable at demand, or at any less time than six months from the borrowing thereof, under a penalty or forfeiture by such persons, bodies politic or corporate, of treble the sum or sums so to be borrowed or taken up on such bill or bills, note or notes, one moiety thereof to be paid to the informer, and the other to the use of his said Majesty, his heirs and successors, to be recovered by action of debt, bill, plaint, or information in any of his Majesty courts of record at Dublin; and whereas

21 & 22  
Geo. 3, c. 16.

1 & 2 Geo. 4,  
c. 72.

(a) By the Statute Law Revision Act, 1873 (36 & 37 Vict. c. 91), sects. 2 to 5 are respectively repealed.

21 & 22  
Geo. 3, c. 16.

6 Geo. 4, c. 42.

by another act, passed in the 1st and 2nd years of the reign of his present Majesty King George the Fourth, intituled "An Act to establish an agreement with the Governor and Company of the Bank of Ireland for advancing the sum of five hundred thousand pounds, Irish currency, and to empower the said governor and company to enlarge the capital stock or fund of the said bank to three millions," it was amongst other things enacted, that from and after the passing the same act it should and might be lawful for any number of persons in Ireland, united or to be united in societies or partnerships, and residing and having their establishments or houses of business at any place not less than 50 miles distant from Dublin, to borrow, owe, or take up any sum or sums of money on their bills or notes payable on demand, and to make and issue such notes or bills accordingly payable on demand at any place in Ireland exceeding the distance of 50 miles from Dublin, the individuals composing such societies or copartnerships being liable and responsible for the due payment of such bills or notes; and such persons should not be subject or liable to any penalty for the making or issuing such bills or notes, anything in an act made in the parliament of Ireland holden in the 21st and 22nd years of the reign of his late Majesty King George the Third, intituled "An Act for establishing a bank by the name of the Governor and Company of the Bank of Ireland," to the contrary notwithstanding: provided always, and it was by the now reciting act further enacted, that no further or other power, privilege, or authority should, previous to the 1st day of January, 1838, nor until after payment to the said governor and company of all sum and sums of money which then were or thereafter should or might become due to them from government, be granted to any copartnership or society of persons whatsoever, contrary to the laws then in force for establishing or regulating the Bank of Ireland, save and except the power of enabling such societies or copartnerships as aforesaid, residing and carrying on their business not less than 50 miles from Dublin, to sue and be sued in the name of a public officer, should parliament thereafter think fit to grant such power; and it was by the now reciting act lastly enacted, that nothing therein contained should extend or be construed to extend to authorize any persons exceeding six in number, or any bodies politic or corporate, residing or having their establishments or houses of business within the distance of 50 miles from Dublin, to make or issue any bill or bills of exchange, or any promissory note or notes, contrary to the provisions of the said in part recited act of the 21st and 22nd years of the reign of King George the Third: and whereas by an act passed in the 6th year of the reign of his said present

Majesty, intituled "An Act for the better regulation of copartnerships of certain bankers in Ireland," reciting the lastly hereinbefore-recited act made and passed in the 1st and 2nd years of his said present Majesty's reign, and that it was expedient that the said last-recited act should be altered and amended, it was amongst other things enacted, that from and after the passing of the said act of the 6th year of his said present Majesty's reign it should and might be lawful for any number of persons united or to be united in any society or copartnership in Ireland, consisting of more than six in number, and not having the establishments or houses of business of such society or copartnerships at any place or places less than 50 miles distant from Dublin, to carry on the trade and business of bankers in like manner as copartnerships of bankers consisting of not more than six in number might lawfully do, and to borrow, owe, or take up any sum or sums of money on their bills or notes payable on demand, or at any time after date or after sight, and to make and issue such notes or bills accordingly at any place in Ireland exceeding the distance of 50 miles from Dublin, all the individuals composing such societies or copartnerships being liable and responsible for the due payment of all such bills or notes in manner thereafter provided, anything contained in the said act made in the parliament of Ireland in the 21st and 22nd years of the reign of his late Majesty King George the Third, hereinbefore recited, or in the hereinbefore-recited act of the 1st and 2nd years of his present Majesty's reign, or in any other act or acts, or any law, usage or custom, to the contrary in anywise notwithstanding; and it was by the same act further enacted, that it should and might be lawful for any such society or copartnership from time to time to have, employ or appoint any agent or agents to do or transact, on behalf of any such society or copartnership, all such business, matters, and things as such society or copartnership might lawfully do, and as were not contrary to any act or acts then in force, and to the provisions of the now reciting act: provided always, and it was by the same act further enacted, that nothing therein contained should extend or be construed to extend to enable or authorize any such society or copartnership, either by any member or members thereof, or by their agent or any other person on behalf of any such society or copartnership, to pay, issue, or re-issue at Dublin, or within 50 miles thereof, any bill or note of such society or copartnership which should be payable to bearer on demand, or any bank post bill, nor to draw upon any partner or agent who might be resident in Dublin, or within 50 miles thereof, any bill of exchange which should be payable on demand, or which should be for less amount than 50*l.*, nor to borrow, owe,

or take up in England or in Dublin, or within 50 miles thereof, any sum or sums of money on any promissory note or bill of any such society or copartnership payable on demand, or at any less time than six months from the borrowing thereof, or to make or issue any bill or bills of exchange or promissory note or notes of any such society or copartnership contrary to the provisions of the said recited act of the 21st and 22nd years of the reign of King George the Third, or of the 1st and 2nd years of the reign of his present Majesty, save as aforesaid, save as provided by the now reciting act in that behalf: provided always, and it was by the now reciting act further enacted, that nothing contained in that act or any other act or acts should extend or be construed to prevent any person or persons whatever, whether resident in Great Britain or Ireland, from being or becoming a member or members of any such society or copartnership in Ireland as aforesaid, or from being or becoming a subscriber and contributor or subscribers and contributors to the stock and capital of any such society or copartnership; and that any such society or copartnership which should or might have been formed or begun to be formed under or by virtue of the provisions contained in the hereinbefore-recited acts of the 1st and 2nd years, and an act, therein recited, made and passed in the 5th year of the reign of his present Majesty, and of which any person or persons should be or should become a member or members, or to which any such person or persons should become a subscriber or subscribers or contributor or contributors as aforesaid, should be or be deemed and taken to all intents and purposes to be a society or copartnership of persons united in Ireland within the true intent and meaning of the now reciting act, anything in the now reciting act, or in any other act or acts, or any law, usage, or custom, to the contrary notwithstanding: provided always, and it was by the now reciting act lastly enacted, that nothing in the said now reciting act contained should be construed to prevent any such society or copartnership from doing any act, matter, or thing which, but for the express provision of the now reciting act they would by law be entitled to do: and whereas it hath been doubted whether such banking societies or copartnerships, consisting of more than six in number, already created or to be created, and not having their establishments or houses of business not less than 50 miles late Irish measurement from Dublin, might lawfully pay in Dublin their notes or bills payable to bearer on demand, for the purpose of withdrawing the same from circulation in Dublin, or within 50 miles late Irish measurement thereof; and it is expedient that such doubt should be removed: be it therefore enacted and also declared, &c., that it is and shall be lawful for any number of persons united or

Copartner-  
ship bankers,  
within a

to be united in any society or copartnership in Ireland as in and by the said acts or either of them is mentioned or provided, consisting of more than six in number, and not having the establishments or houses of business of such society or copartnership at any place or places less than 50 miles of the late Irish measurement distant from Dublin, to pay in Dublin, for the purpose of withdrawing them from circulation in Dublin, or within 50 miles of the late Irish measurement thereof, by any bankers, agents, or correspondents, or any other person or persons on behalf of such society or copartnership, whether such bankers, agents, correspondents, or other person or persons shall be members or a member of such society or copartnership, any bills and notes of such society or copartnership made payable to bearer on demand, yet so nevertheless that all such bills and notes so paid in Dublin and withdrawn from circulation as aforesaid may be re-issued at the place where such bills or notes were originally issued: provided always, that such bills or notes are and shall be originally issued and made payable at some place or places, specified in such bills or notes, exceeding the distance of 50 miles of the late Irish measurement from Dublin, and not elsewhere, and shall not be re-issued within 50 miles of the last Irish measurement of Dublin.

certain distance, may pay their notes in Dublin.

6. And whereas by the said recited act, passed in the 6th year of the reign of his present Majesty, it was amongst other things further enacted, that between the 25th day of March in any year and the 25th day of March following, an account or return should be made out by the secretary or some other officer of every such society or copartnership, and should be signed by such secretary or other officer, and should be verified by the oath of such officer taken before any justice of the peace (and which oath any justice of the peace was thereby authorized and empowered to administer) according to the form contained in the schedule to that act annexed, and in every such account or return there should be set forth the true name or firm of such society or copartnership, and also the names and places of abode of all the partners concerned or engaged in such society or copartnership, as the same respectively appear on the books of such society or copartnership, and the firm and name of and every bank or banks established or to be established by such society or copartnership, and also the names of two or more individuals of such society or copartnership who should be resident in Ireland, each and every of whom should respectively be considered as a public officer of such society or copartnership, and the title of office or other description of every such individual respectively in the name of any one of whom such society or copartnership should sue and be sued as thereafter provided,

Account of new officers or places of banking in the course of any year to be made out.

and also the name of every town and place where any such bills or notes should be issued by any such society or copartnership, or by any agent or agents of any such society or copartnership; and every such account or return should be produced at the stamp office in Dublin, and an entry and registry thereof should be made in a book or books to be kept for that purpose at the said stamp office by some person or persons to be appointed for that purpose by the commissioners of stamp duties; and if, after the passing of that act, any such society or copartnership should omit or neglect to deliver at the stamp office in Dublin such account and return as was by that act required, such society or copartnership should, for each and every week they should so neglect to make such account and return, forfeit the sum of 500*l.*: and it was further enacted that whenever any entry and registry of the firm or name of any such society or copartnership should be made at the stamp office, in manner aforesaid, at any time between the 25th day of March in any year and the 25th day of March following, a certificate of such entry or registry should be granted by the said commissioners of stamps, or by some person deputed and authorized by the said commissioners for that purpose, to the society or copartnership by or on whose behalf such entry or registry should be made, and such certificate should be written on vellum, parchment, or paper duly stamped with a stamp required by law for certificates to be taken out yearly by any banker or bankers in Ireland, and a separate and distinct certificate on a separate piece of vellum, parchment, or paper, with a separate and distinct stamp, should be granted for and in respect of every town and place where any such bill or note should be issued by any such society or copartnership, or by any agent or agents for or on account of such society or copartnership, and every such certificate should specify the proper firm, style, title, or name of such society or copartnership under which such notes were to be issued, and also the name of the town or place or the several towns or places where such notes were to be issued, and the christian and surname and place of abode and title of office or other description of the several individuals named respectively as the public officers of such society or copartnership, in the name of any one of whom such society or copartnership should sue and be sued; and every certificate should be dated on the day on which the same should be granted, and should have effect and continue in force from the day of the date thereof until the 25th day of March following, both inclusive, and no longer, and should be sufficient evidence of the appointment and authority of such public officers respectively: and whereas by the said last-recited act no provision is made for adding to the registry, between the

25th day of March in any year and the 25th day of March in the succeeding year, the name or names of any additional public officer or public officers, or of any additional place or places where such societies or copartnerships may establish a bank or banks, or issue the bills or notes thereby authorized; be it therefore further enacted, that from and after the passing of this act it shall and may be lawful to and for such societies or copartnerships from time to time, and at any times between the 25th day of March in any year and the 25th day of March in the succeeding year, to make out upon oath, and cause to be delivered to the commissioners of stamps, in manner mentioned in the said last-recited act of the 6th year of the reign of King George the Fourth, a further account or return or further accounts or returns, according to the form contained in the schedule to this act annexed (a), of the name or names of any person or persons who shall have been nominated or appointed a new or additional public officer or public officers of such society or copartnership, or of the name of any new or additional town or towns, or place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable, or of both or either of the above matters together or separately; and such further accounts or returns shall from time to time be filed and kept and entered and registered at the stamp office in Dublin in like manner as is by the said act of the 6th year of the reign of King George the Fourth required with respect to the ori-

(a) SCHEDULE.

RETURN or account to be entered at the Stamp Office in Dublin, on behalf of [*name society or copartnership*], in pursuance of an act passed in the                      year of the reign of King George the Fourth, intituled [*insert the title of this act*], videlicet,

Names of any and every new or additional public officer of the said society or copartnership, videlicet,

A. B. in room of C. D. deceased or removed, or in addition to C. D. and E. F. [*as the case may be; set forth every name*].

Names of any additional town or place, or towns or places, where bills or notes are to be issued, and where the same are to be made payable:

[*Set forth the names.*]

A. B. of                      secretary [*or other officer*] of the above-named society or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of every person who hath become or been appointed a public officer of the above society or copartnership since the registry [*or last account or return*] of the said society or copartnership, on the                      day of                      last, as the same respectively appear on the books of the said society or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me, the  
in the county of

day of

C. D. justice of the peace in and  
for the said county.

Additional  
certificates to  
be granted.

Certified  
copies of  
returns to be  
evidence of  
the appoint-  
ment of the  
public officers,  
&c.

Commission-  
ers of stamps  
to give certi-  
fied copies of  
returns, on  
payment  
of 10s.

Explaining  
the time at  
which  
societies are to  
make returns  
to the stamp  
office.

ginal or annual account or return thereby directed to be made, and that thereupon an additional certificate or additional certificates of such account and return or accounts and returns shall be granted by the persons, and in the same manner, and upon the same stamps, and containing the same particulars as in the said recited act of the 6th year of the reign of his present Majesty particularly mentioned; and which additional certificate or certificates shall have effect and continue in force from the day of the date thereof until the 25th day of March following, and no longer, and shall be sufficient evidence of the appointment and authority of the public officers respectively.

7. That a copy of any such account or return so filed or kept and registered at the stamp office as by the said recited act of the 6th year of the reign of his present Majesty and by this act is directed, and which copy shall be certified to be a true copy under the hand or hands of one or more of the commissioners of stamps, or other officer or officers of the stamp office in London or Dublin for the time being, upon proof made that such certificate has been signed with the handwriting of the person or persons making the same, and whom it shall not be necessary to prove to be a commissioner or commissioners, officer or officers, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the public officers named in such account or return, and also of the fact that all persons named therein as members of such society or copartnership were members thereof at the date of such account or return.

8. That the said commissioners of stamps or other officers of the stamp office for the time being shall and they are hereby required, upon application made to them by any person or persons requiring a copy, certified according to this act, of any such account or return as aforesaid, in order that the same may be produced in evidence, or for any other purpose, to deliver to the person or persons so applying for the same such certified copy, he, she, or they paying for the same the sum of 10s. and no more.

9. And whereas doubts have arisen as to the mode and times at which the societies or copartnerships authorized by the said recited act of the 6th year of the reign of King George the Fourth, by the terms of the said act, are required to make a return or account of the sales and transfers of their shares; be it therefore further enacted and declared, that it is and shall be the true intent and meaning of the said recited act of the 6th year of the reign of King George the Fourth, that such societies and copartnerships are not and shall not be liable or obliged to make any return or account to the stamp office in Dublin of any sale or transfer of their shares which

shall take place between the 25th day of March in any year and the 25th day of March in the succeeding year; but the said societies or copartnerships shall only be liable and obliged to make an account or return to the stamp office in Dublin once in every year in the manner and containing the particulars in the said act mentioned.

*Bankers' Licences and Composition Bank Notes' Duty.*

5 & 6 VICT. c. 82.

*An Act to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same, until the 10th day of October, 1845 (a).  
[5th August, 1842.]*

WHEREAS it is expedient to assimilate the stamp duties in Great Britain and Ireland, be it enacted, &c.

2. That for and in respect of the promissory notes on unstamped paper issued by any licensed banker in Ireland, or such notes of such banker in circulation, the same composition as is payable by bankers in England in pursuance of an act passed in the 9th year of the reign of King George the Fourth, intituled "An Act to enable bankers in England to issue certain unstamped promissory notes and bills of exchange, upon payment of a composition in lieu of the stamp duties thereon" (b); and that the said schedule (c) annexed to the said first-mentioned act passed in the 55th year of the reign of King George the Third shall, for the purposes of this act, be read and taken and considered as if the same was annexed to and was a part of this act, \* \* \* \* provided also, that nothing herein or in the said schedule contained shall exempt, or be deemed to exempt, from any of the duties hereby charged, any of the bills or promissory notes of the Bank of Ireland, except under or by virtue of any contract or agreement authorized by the laws in force to be made between the governor and company of the said bank and the commissioners of her Majesty's Treasury in that behalf.

On composition for bankers' notes the same as by 9 Geo. 4, c. 23 (b).

Exceptions not to extend to bills or notes of the Bank of Ireland.

(a) By the Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 99), the whole of this act, except so far as it relates to the subject of this Appendix, viz.,—(2) Licences to bankers; (3) Composition for duties on bankers' notes,—is repealed.

(b) See this act, *ante*, p. 600.

(c) SCHEDULE to which this Act refers. Duty.

CERTIFICATE to be taken out yearly by any banker or bankers, or person or persons acting as such, of having registered the firm of his or their house according to law;  
If such banker or bankers, or other person or persons, shall issue any promissory notes for money payable to bearer on demand, and allowed to be re-issued .. £ s. d.  
30 0 0

*Regulation of Issue of Bank Notes.*

8 &amp; 9 VICT. C. 37.

*An Act to regulate the Issue of Bank Notes in Ireland, and to regulate the Repayment of certain Sums advanced by the Governor and Company of the Bank of Ireland for the Public Service.*  
[21st July, 1845.]

Authorizing certain banking copartnerships to carry on business in Dublin or within 50 miles thereof.

It shall and may be lawful for any persons exceeding six in number united or to be united in societies or partnerships, or for any bodies politic or corporate, to transact or carry on the business of bankers in Ireland at Dublin, and at every place within 50 miles thereof, as freely as persons exceeding six in number united as aforesaid may lawfully carry on the same business at any place in Ireland beyond the distance of 50 miles from Dublin: provided always, that every member of any such society, partnership, bodies politic or corporate, shall be liable and responsible for the due payment of all the debts and liabilities of the corporation or copartnership of which such person shall be a member, any agreement, covenant, or contract to the contrary notwithstanding.

Interest at the rate of three and a half per centum per annum made payable to the bank.

2. That from and after the passing of this act the repayment of the said sum of 2,630,769*l.* 4*s.* 8*d.*, shall be and the same is hereby made chargeable upon the consolidated fund of the United Kingdom of Great Britain and Ireland until parliament shall otherwise provide, and there shall be paid and payable, but subject to the condition of redemption hereinafter contained, at the receipt of her Majesty's exchequer in Dublin, to the Governor and Company of the said Bank of Ireland, out of the consolidated fund of the United Kingdom of Great Britain and Ireland, in respect of the said capital sum of 2,630,769*l.* 4*s.* 8*d.*, so now due by the public to the said governor and company, the aforesaid annuity of 92,076*l.* 18*s.* 5*d.*, being an interest or annuity at and after the rate of 3*l.* 10*s.* per centum per annum, in the now lawful currency of the United Kingdom, by two equal half-yearly payments, without any defalcation or abatement, on the 5th day of January and the 5th day of July in each year (*a*).

Bank shall manage the public debt of Ireland, and pay dividends without expense to government.

3. That from and after the passing of this act the said Governor and Company of the Bank of Ireland shall from time to time and at all times during the continuance of their charter, and until the said corporation shall be dissolved pursuant to the provisions of this act, continue to manage and to pay all interest, annuities, and dividends payable at the said bank in respect of such part of the public debt as shall for

(*a*) So much of sect. 2 as relates to the payment of interest on said sums amounting to 2,630,769*l.* 4*s.* 8*d.*, and the whole of sect. 3, are repealed by 28 & 29 Vict. c. 16, s. 1.

the time being require to be transacted in Ireland, or in respect of any fund or stock created or to be created in consequence of any public loan, or funding of exchequer bills, or conversion of stock in Ireland, or of any public annuities, whether for lives or for years, without making any charge to her Majesty, her heirs or successors, or to the lord high treasurer or the commissioners of her Majesty's treasury, for their trouble or expense in so doing, any law, usage, or custom to the contrary notwithstanding (b).

4. That at any time after the 1st day of January which will be in the year of our Lord 1855, upon twelve months' notice, to be published in the Dublin Gazette by order of the lord lieutenant or other chief governor or governors of Ireland, that the said corporation of the bank is to be dissolved, and upon repayment by parliament to the said Governor and Company of the Bank of Ireland, or their successors, of the said sum of 2,630,769*l.* 4*s.* 8*d.*, together with all arrears of interest or annuity due in respect thereof, then and in such case the said interest or annuity shall, from and after the expiration of twelve months after such notice published, cease and determine, and the said corporation shall be dissolved.

Bank corporation may be dissolved on notice after 1st of January, 1855.

6. And whereas by an act passed in the 3rd and 4th years of the reign of his late Majesty King William the Fourth, intituled "An Act for giving to the corporation of the Governor and Company of the Bank of England certain privileges for a limited period, under certain conditions," it was enacted, that from and after the 1st day of August, 1834, unless and until parliament should otherwise direct, a tender of a note or notes of the Governor and Company of the Bank of England expressed to be payable to bearer on demand should be a legal tender to the amount expressed in such note or notes, and should be taken to be valid as a tender to such amount for all sums above 5*l.*, on all occasions on which any tender of money may be legally made, so long as the Bank of England should continue to pay on demand their said notes in legal coin; provided always, that no such note or notes should be deemed a legal tender of payment by the Governor and Company of the Bank of England, or any branch bank of the said governor and company: and whereas doubts have arisen as to the extent of the said enactment; for removal whereof, be it enacted and declared, that nothing in the said last recited act contained shall extend or be construed to extend to make the tender of a note or notes of the Governor and Company of the Bank of England a legal tender in Ireland: provided also, that nothing in this act shall be construed to prohibit the circulation in Ireland of the notes of the

Bank of England notes not a legal tender in Ireland.

3 & 4 Will. 4, c. 98.

Proviso.

(b) See note (a), *ante*, p. 726.

Governor and Company of the Bank of England as heretofore.

Oaths to be taken by directors, &c. of the Bank of Ireland.

7. That from and after the passing of this act it shall not be necessary for any governor, deputy governor, or director of the said bank, before acting in the said several offices or trusts, to make and subscribe the declaration pursuant to the act of parliament passed in the kingdom of Ireland, intituled "An Act to prevent the further growth of popery," nor to take any other oaths than the oath of allegiance, the oath of qualification by possession of stock and the oath of fidelity to the corporation prescribed in and by the charter of incorporation of the governor and company of the said bank, and that it shall not be necessary for any member of the said corporation, before voting in any general court, to make and subscribe the aforesaid declaration, nor to take any other oaths than the oaths of allegiance, the oath of qualification by the possession of stock, and the oath of fidelity to the said corporation provided in the said charter of incorporation: provided always, that in case any of the persons called Quakers shall at any time be chosen governor, deputy governor, or director, or shall be or become a member of the said corporation, it shall be sufficient for such person or persons to make his or their solemn affirmation, to the purport and effect of the oaths prescribed by the said charter and by this act to be taken by governors, deputy governors, directors, or members respectively of the said corporation.

Bankers claiming to be entitled to issue bank notes to give notice to commissioners of stamps and taxes.

Commissioners to certify existing banks of issue and limitation of issue.

8. That every banker claiming to be entitled to issue bank notes in Ireland shall, within one month next after the passing of this act, give notice in writing to the commissioners of stamps and taxes, at their head office in London, of such claim, and of the place and name and firm at and under which such banker has issued such notes in Ireland during the year next preceding the 1st day of May, 1845, and thereupon the said commissioners shall ascertain if such banker was on the 6th day of May, 1844, and from thence up to the 1st day of May, 1845, carrying on the business of a banker, and lawfully issuing his own bank notes in Ireland, and if it shall so appear, then the said commissioners shall proceed to ascertain the average amount of the bank notes of such banker which were in circulation during the said period of one year preceding the 1st day of May, 1845, according to the returns made by such banker in pursuance of the act passed in the 4th and 5th years of the reign of her present Majesty, intituled "An Act to make further provisions relative to the returns to be made by banks of the amount of their notes in circulation," and the said commissioners, or any two of them, shall certify under their hands to such banker the average amount, when so ascertained as aforesaid, omitting the fractions of a pound, if any; and it shall be lawful for every such banker to continue to

issue his own bank notes after the 6th day of December, 1845, to the extent of the amount so certified, and of the amount of the gold and silver coin held by such banker, in the proportion and manner hereinafter mentioned, but not to any further extent; and from and after the 6th day of December, 1845, it shall not be lawful for any banker to make or issue bank notes in Ireland, save and except only such bankers as shall have obtained such certificate from the commissioners of stamps and taxes.

Prohibiting  
issue by un-  
certified  
bankers.

9. Provided always, that if it shall be made to appear to the commissioners of stamps and taxes that any two or more banks have, by written contract or agreement (which contract or agreement shall be produced to the said commissioners), become united within the year next preceding such 1st day of May, 1845, it shall be lawful for the said commissioners to ascertain the average amount of the notes of each such bank in the manner hereinbefore directed, and to certify a sum equal to the average amount of the notes of the two or more banks so united as the amount which the united bank shall thereafter be authorized to issue, subject to the regulations of this act.

Provision for  
united banks.

10. That the commissioners of stamps and taxes shall, at the time of certifying to any banker such particulars as they are hereinbefore required to certify, also publish a duplicate of their certificate thereof in the next succeeding Dublin Gazette in which the same may be conveniently inserted; and the gazette in which such publication shall be made shall be conclusive evidence in all courts whatsoever of the amount of bank notes which the banker named in such certificate or duplicate is by law authorized to issue and to have in circulation as aforesaid, exclusive of an amount equal to the monthly average amount of the gold and silver coin held by such banker as herein provided.

Duplicate of  
certificate to  
be published  
in the  
Gazette.

Gazette to be  
evidence.

11. That in case it shall be made to appear to the commissioners of stamps and taxes at any time hereafter that any two or more banks have, by written contract or agreement (which contract or agreement shall be produced to the said commissioners), become united subsequently to the passing of this act, it shall be lawful to the said commissioners, upon the application of such united bank, to certify, in manner hereinbefore mentioned, the aggregate of the amount of bank notes which such separate banks were previously authorized to issue under the separate certificates previously delivered to them, and so from time to time; and every such certificate shall be published in manner hereinbefore directed; and from and after such publication the amount therein stated shall be and be deemed to be the limit of the amount of bank notes which such united bank may have in circulation, exclusive of

In case banks  
become  
united, com-  
missioners to  
certify the  
amount of  
bank notes  
which each  
bank was  
authorized to  
issue.

an amount equal to the monthly average amount of the gold and silver coin held by such banker as herein provided.

Banks  
entitled to  
the privilege  
of issuing  
notes may  
relinquish the  
same;

12. That it shall be lawful for any banker in Ireland who under the provisions of this act is entitled to issue bank notes to contract and agree with the Governor and Company of the Bank of Ireland, by an agreement in writing, for the relinquishment of the privilege of issuing such notes in favour of the said governor and company, and in each such case a copy of such agreement shall be transmitted to the commissioners of stamps and taxes; and the said commissioners shall thereupon certify, in manner hereinbefore mentioned, the aggregate of the amount of bank notes which the Bank of Ireland and the banker with whom such agreement shall have been made were previously authorized to issue under the separate certificates previously delivered to them; and every such certificate shall be published in manner hereinbefore directed; and from and after such publication the amount therein stated shall be the limit of the amount of bank notes which the Governor and Company of the Bank of Ireland may have in circulation, exclusive of an amount equal to the amount of the gold and silver coin held by the Bank of Ireland as herein provided.

but not  
resume  
the issue.

13. That it shall not be lawful for any banker who shall have so agreed to relinquish the privilege of issuing bank notes at any time thereafter to issue any such notes.

Limitation of  
bank notes in  
circulation.

14. That from and after the 6th day of December, 1845, it shall not be lawful for any banker in Ireland to have in circulation, upon the average of a period of four weeks, to be ascertained as hereinafter mentioned, a greater amount of notes than an amount composed of the sums certified by the commissioners of stamps and taxes as aforesaid, and the monthly average amount of gold and silver coin held by such banker during the same period of four weeks, to be ascertained in manner hereinafter mentioned.

Issue of notes  
for fractional  
parts of a  
pound pro-  
hibited.

15. That all bank notes to be issued or re-issued in Ireland after the 6th day of December, 1845, shall be expressed to be for payment of a sum in pounds sterling, without any fractional parts of a pound; and if any banker in Ireland shall from and after that day make, sign, issue, or re-issue any bank note for the fractional part of a pound sterling, or for any sum together with the fractional part of a pound sterling, every such banker so making, signing, issuing, or re-issuing, any such note as aforesaid shall for each note so made, signed, issued, or re-issued forfeit or pay the sum of 20*l*.

Issuing banks  
to render  
accounts  
weekly.

16. That every banker who after the 6th day of December, 1845, shall issue bank notes in Ireland shall, on some one day in every week after the 13th day of December, 1845 (such day

to be fixed by the commissioners of stamps and taxes), transmit to the said commissioners a just and true account of the amount of bank notes of such banker in circulation at the close of the business on the next preceding Saturday, distinguishing the notes of 5*l.* and upwards, and the notes below 5*l.*, and also an account of the total amount of gold and silver coin held by such banker at each of the head offices or principal places of issue in Ireland of such banker at the close of business on each day of the week ending on that Saturday, and also an account of the total amount of gold and silver coin in Ireland held by such banker at the close of business on that day; and on completing the first period of four weeks, and so on completing each successive period of four weeks, every such banker shall annex to such account the average amount of bank notes of such banker in circulation during the said four weeks, distinguishing the bank notes of 5*l.* and upwards, and the notes below 5*l.*, and the average amount of gold and silver coin respectively held by such banker at each of the head offices or principal places of issue in Ireland of such banker during the said four weeks, and also the amount of bank notes which such banker is, by the certificate published as aforesaid, authorized to issue under the provisions of this act; and every such account shall be verified by the signature of such banker or his chief cashier, or in the case of a company or partnership by the signature of the chief cashier or other officer duly authorized by the directors of such company or partnership, and shall be made in the form to this act annexed marked (A.) (a): and if any such banker shall neglect or refuse to render any such account in the form and at the time required by this act, or shall at any time render a false account, such banker shall forfeit the sum of 100*l.* for every such offence.

17. That all bank notes shall be deemed to be in circulation from the time the same shall have been issued by any banker, or any servant or agent of such banker, until the same shall have been actually returned to such banker, or some servant or agent of such banker.

What shall be deemed to be bank notes in circulation.

18. That from the returns so made by each banker to the commissioners of stamps and taxes the said commissioners shall, at the end of the first period of four weeks after the said 6th day of December, 1845, and so at the end of each successive period of four weeks, make out a general return in the form to this act annexed marked (B.) (b) of the monthly average amount of bank notes in circulation of each banker in Ireland during the last preceding four weeks, and of the

Commissioners of stamps to make a monthly return.

(a) See note (a), *post*, p. 732.

(b) See note (b), *post*, p. 733.

(a) SCHEDULE (A.)

Amount of gold and silver coin held at the head office or principal place of issue at the close of business on—

	Head Office at		Head Office at		Head Office at		Head Office at	
	Gold	Silver	Gold	Silver	Gold	Silver	Gold	Silver
Monday the								
Tuesday the								
Wednesday the								
Thursday the								
Friday the								
Saturday the								

Gold.....	£
Silver .....	£
<hr/>	
Total .....	£

[To be inserted in the account at the end of each period of four weeks.]

Amount of notes authorized by certificate.....	£
Average amount of notes in circulation } £5 and upwards	£
during the four weeks ending as above } Under £5	£
Average amount of coin held during the said } Gold	£
four weeks ..... } Silver	£
Total.....	£

I, \_\_\_\_\_, being the [banker, chief cashier, director or partner, as the case may be], do hereby certify, that the above is a true account of the notes in circulation, and of the coin held by the said bank, as required under the act 8 & 9 Vict. c. \_\_\_\_\_.

Dated this       day of       18       Signed \_\_\_\_\_

19. That for the purpose of ascertaining the monthly average amount of bank notes of each banker in circulation, the aggregate of the amount of bank notes of each such banker in circulation at the close of the business on the Saturday in each week during the first complete period of four weeks next after the 6th day of December, 1845, shall be divided by the number of weeks, and the average so ascertained shall be deemed to be the average of bank notes of each such banker in circulation during such period of four weeks, and so in each successive period of four weeks; and the monthly average amount of gold and silver coin respectively held as aforesaid by such banker shall be ascertained in like manner from the amount of gold and silver coin held by such banker at the head offices or principal places of issue of such banker in Ireland, as after mentioned, at the close of business on such day in each week; and the monthly average amount of bank notes of each such banker in circulation during any such period of four weeks is not to exceed a sum made up by adding the amount certified by the commissioners of stamps and taxes as aforesaid and the monthly average amount of gold and silver coin held by such banker as aforesaid during the same period.

Mode of ascertaining the average amount of bank notes of each banker in circulation, and gold coin, during the first four weeks after the 6th day of December, 1845.

20. That in taking account of the coin held by any banker in Ireland with respect to which bank notes to a further extent than the sum certified as aforesaid by the commissioners of stamps and taxes may, under the provisions of this act, be made and issued, there shall be included only the gold

What shall be taken in the account of coin held by any banker.

(b) SCHEDULE (B.)

Name and Title, as set forth in the Licence.	Name of the Firm.	Head Office, or principal Place of Issue.	Circulation authorized by Certificate.	Average Circulation during Four Weeks ending the			Average Amount of Coin held during Four Weeks ending		
				£5 and upwards.	Under £5.	Total.	Gold.	Silver.	Total.

I hereby certify, that each of the bankers named in the above return who have in circulation an amount of notes beyond that authorized in their certificate [with the exception of A. B. or C. D., as the case may be,] have held an amount of gold and silver coin not less than that which they are required to hold during the period to which this return relates.

(Signed) \_\_\_\_\_ Officer of Stamp Duties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

Silver coin not to exceed the proportion of one quarter of gold.

Commissioners of stamps and taxes empowered to cause the books of bankers, containing accounts of their bank notes in circulation, and of gold coin, to be inspected.

Penalty for refusing to allow such inspection.

and silver coin held by such banker at the several head offices or principal places of issue in Ireland of such banker, such head offices or principal places of issue not exceeding four in number, of which not more than two shall be situated in the same province; and every banker shall give notice in writing to the said commissioners, on or before the 6th day of December next, of such head offices or principal places of issue at which the account of gold and silver coin held by him is to be taken as aforesaid; and no amount of silver coin exceeding one fourth part of the gold coin held by such banker as aforesaid shall be taken into account, nor shall any banker be authorized to make and issue bank notes in Ireland on any amount of silver coin held by such banker exceeding the proportion of one fourth part of the gold coin held by such banker as aforesaid.

21. And whereas in order to ensure the rendering of true and faithful accounts of the amount of bank notes in circulation, and the amount of gold and silver coin held by each banker, as directed by this act, it is necessary that the commissioners of stamps and taxes should be empowered to cause the books of bankers issuing such notes, and the amount of gold and silver coin held by such bankers as aforesaid, to be inspected as hereinafter mentioned; be it therefore enacted, that all and every the book and books of any banker who shall issue bank notes under the provisions of this act, in which shall be kept, contained, or entered any account, minute, or memorandum of or relating to the bank notes issued or to be issued by such bank, of or relating to the amount of such notes in circulation from time to time, or of or relating to the gold or silver coin held by such banker from time to time, or any account, minute, or memorandum of the sight or inspection whereof may tend to secure the rendering of true accounts of the average amount of such notes in circulation and gold or silver coin held as directed by this act, or to test the truth of any such account, shall be open for the inspection and examination at all seasonable times of any officer of stamp duties authorized in that behalf by writing signed by the commissioners of stamps and taxes, or any two of them; and every such officer shall be at liberty to take copies of or extracts from any such book or account as aforesaid, and to inspect and ascertain the amount of any gold or silver coin held by such banker; and if any banker or other person keeping any such book, or having the custody or possession thereof or power to produce the same, shall, upon demand made by any such officer showing (if required) his authority in that behalf, refuse to produce any such book to such officer for his inspection and examination, or to permit him to inspect and examine the same, or to take copies thereof or extracts therefrom, or of or from any such account,

minute or memorandum as aforesaid, kept, contained, or entered therein, or if any banker or other person having the custody or possession of any coin belonging to such banker shall refuse to permit or prevent the inspection of such gold and silver coin as aforesaid, every such banker or other person so offending shall for every such offence forfeit the sum of 100*l.*: provided always, that the said commissioners shall not exercise the powers aforesaid without the consent of the commissioners of her Majesty's treasury.

22. That every banker in Ireland, other than the Bank of Ireland, who is now carrying on or shall hereafter carry on business as such, shall, on the first day of January in each year, or within 15 days thereafter, make a return to the commissioners of stamps and taxes, at their office in Dublin, of his name, residence, and occupation, or, in the case of a company or partnership, of the name, residence, and occupation of every person composing or being a member of such company or partnership, and also the name of the firm under which such banker, company, or partnership carrying on the business of banking, and of every place where such business is carried on; and if any such banker shall omit or refuse to make such return within 15 days after the said 1st day of January, or shall wilfully make other than a true return of the persons as herein required, every banker so offending shall forfeit or pay the sum of 50*l.*; and the said commissioners of stamps and taxes shall on or before the 1st day of March in every year publish in the Dublin Gazette a copy of the return so made by every banker.

All bankers to return their names once a year to the stamp office.

23. That if the monthly average circulation of bank notes of any banker, taken in the manner herein directed, shall at any time exceed the amount which such banker is authorized to issue and to have in circulation under the provisions of this act, such banker shall in every such case forfeit a sum equal to the amount by which the average monthly circulation, taken as aforesaid, shall have exceeded the amount which such banker was authorized to issue and to have in circulation as aforesaid.

Penalty on banks issuing in excess.

24. That all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of any sum or sums of money, or any orders, notes, or undertakings in writing, being negotiable or transferable, for the delivery of any goods, specifying their value in money less than the sum of 20*s.* in the whole, heretofore made or issued, or which shall hereafter be made or issued in Ireland, shall, from and after the 1st day of January, 1846, be and the same are hereby declared to be absolutely void and of no effect, any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding;

Notes for less than 20*s.* not negotiable in Ireland.

and that if any person or persons shall, after the 1st day of January, 1846, by any art, device, or means whatsoever, publish or utter in Ireland any such notes, bills, drafts, or engagements as aforesaid, for a less sum than 20s., or on which less than a sum of 20s. shall be due, and which shall be in anywise negotiable or transferable, or shall negotiate or transfer the same in Ireland, every such person shall forfeit and pay for every such offence any sum not exceeding 20*l.* nor less than 5*l.*, at the discretion of the justice of the peace who shall hear and determine such offence.

Notes for 20s. and above, and less than 5*l.*, to be drawn in certain form (c).

25. That all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of 20s., or any sum of money above that sum and less than 5*l.*, or on which 20s., or above that sum and less than 5*l.*, shall remain undischarged, and which shall be issued within Ireland at any time after the 1st day of January, 1846, shall specify the names and places of abode of the persons respectively to whom or to whose order the same shall be made payable, and shall bear date before or at the time of drawing or issuing thereof, and not on any day subsequent thereto, and shall be made payable within the space of 21 days next after the date thereof, and shall not be transferable or negotiable after the time hereby limited for payment thereof, and that every indorsement to be made thereon shall be made before the expiration of that time, and to bear date at or not before the time of making thereof, and shall specify the name and place of abode of the person or persons to whom or to whose order the money contained in every such note, bill, draft, or undertaking is to be paid; and that the signing of every such note, bill, draft, or undertaking, and also of every such indorsement, shall be attested by one subscribing witness at the least; and which said notes, bills of exchange, or drafts, or undertakings in writing, may be made or drawn in words to the purport or effect as set out in the schedules to this act annexed marked (D.) (a) and (E.) (b); and that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing being negotiable or transferable, for the payment of 20s., or any sum of money

(a) SCHEDULE (D.).

[Place] [day] [month] [year]  
Twenty-one days after date I promise to pay to A. B. of [place], or his order, the sum of \_\_\_\_\_ for value received by \_\_\_\_\_

Witness, E. F.

C. D.

*And the indorsement, toties quoties.*

[Day] [month] [year]  
Pay the contents to G. H. of [place], or his order.

Witness, J. K.

A. B.

(b) See note (b), *post*, p. 737.

(c) See note (c), *post*, p. 737.

above that sum and less than 5*l.*, or in which 20*s.*, or above that sum and less than 5*l.*, shall remain undischarged, and which shall be issued in Ireland at any time after the said 1st day of January, 1846, in any other manner than as aforesaid, and also every indorsement on any such note, bill, draft, or other undertaking to be negotiated under this act, other than as aforesaid, shall and the same are hereby declared to be absolutely void, any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding; provided that nothing in this clause contained shall be construed to extend to any such bank notes as shall be lawfully issued by any banker in Ireland authorized by this act to continue the issue of bank notes (*c*).

26. That if any body politic or corporate or any person or persons shall, from and after the said 1st day of January, 1846, make, sign, issue, or re-issue in Ireland any promissory note payable on demand to the bearer thereof for any sum of money less than the sum of 5*l.*, except the bank notes of such bankers as are hereby authorized to continue to issue bank notes as aforesaid, then and in either of such cases every such body politic or corporate or person or persons so making, signing, issuing, or re-issuing any such promissory note as aforesaid, except as aforesaid, shall for every such note so made, signed, issued, or re-issued forfeit the sum of 20*l.*

Penalty for persons other than bankers hereby authorized issuing notes payable on demand for less than five pounds.

27. That if any body politic or corporate or person or persons shall, from and after the passing of this act, publish, utter, or negotiate in Ireland any promissory or other note (not being the bank note of a banker hereby authorized to continue to issue bank notes), or any bill of exchange, draft, or undertaking in writing, being negotiable or transferable, for the payment of 20*s.*, or above that sum and less than 5*l.*, or on which 20*s.*, or above that sum and less than 5*l.*, shall remain undischarged, made, drawn, or indorsed in any other manner than as is hereinbefore directed, every such body politic or corporate or person or persons so publishing, uttering, or negotiating any such promissory or other note (not

Penalty for persons other than bankers hereby authorized uttering or negotiating notes, bills of exchange, &c., transferable, for payment of 20*s.*, or less than five pounds.

(b) SCHEDULE (E.).

[Place] [day] [month] [year]  
Twenty-one days after date pay to A. B. of [place], or his order, the sum of value received, as advised by

To E. F. of [place].

C. D.

Witness, G. H.

*And the indorsement, toties quoties.*

[Day] [month] [year]  
Pay the contents to J. K. of [place], or his order.

Witness, L. M.

A. B.

(c) By 27 & 28 Vict. c. 20, the restrictions on the issue of these notes were removed originally for three years, and now continued by 36 & 37 Vict. c. 75, to the 13th May, 1874.

being such bank note as aforesaid, bill of exchange, draft, or undertaking in writing as aforesaid, shall forfeit and pay the sum of 20*l*.

Not to prohibit cheques on bankers.

28. Provided always, that nothing herein contained shall extend to prohibit any draft or order drawn by any person on his banker, or on any person acting as such banker, for the payment of money held by such banker or person to the use of the person by whom such draft or order shall be drawn.

Mode of enforcing penalties.

29. That all pecuniary penalties under this act may be sued or prosecuted for and recovered for the use of her Majesty, in the name of her Majesty's attorney-general or solicitor-general in Ireland, or of the solicitor of stamps in Ireland, or of any person authorized to sue or prosecute for the same, by writing under the hands of the commissioners of stamps and taxes, or in the name of any officer of stamp duties, by action of debt, bill, plaint, or information in the Court of Exchequer in Dublin, or by civil bill in the court of the recorder, chairman, or assistant barrister within whose local jurisdiction any offence shall have been committed, in respect of any such penalty, or, in respect of any penalty not exceeding 20*l*., by information or complaint before one or more justice or justices of the peace in Ireland, in such and the same manner as any other penalties imposed by any of the laws now in force relating to the duties under the management of the commissioners of stamps; and it shall be lawful in all cases for the commissioners of stamps and taxes, either before or after any proceedings commenced for recovery of any such penalty, to mitigate or compound any such penalty as the said commissioners shall think fit, and to stay any such proceedings after the same shall have been commenced, and whether judgment may have been obtained for such penalty or not, on payment of part only of any such penalty, with or without costs, or on payment only of the costs incurred in such proceedings, or of any part thereof, or on such other terms as such commissioners shall judge reasonable: provided always, that in no such proceeding as aforesaid shall any essoign, protection, wager of law, nor more than one imparlance be allowed; and all pecuniary penalties imposed by or incurred under this act, by whom or in whose name soever the same shall be sued or prosecuted for or recovered, shall go and be applied to the use of her Majesty, and shall be deemed to be and shall be accounted for as part of her Majesty's revenue arising from stamp duties, any thing in any act contained, or any law or usage, to the contrary in anywise notwithstanding: *provided always, that it shall be lawful for the commissioners of stamps and taxes, at their discretion, to give all or any part of such penalties as rewards to any person or persons who shall have detected the*

*offenders, or given information which may have led to their prosecution and conviction (a).*

30. That after the passing of this act every company or copartnership of more than six persons established before the passing of this act, for the purpose of carrying on the trade or business of bankers within the distance of 50 miles from Dublin, shall have the same powers and privileges of suing and being sued, and of presenting petitions to found sequestrations or fiats in bankruptcy, in the name of any one of the public officers of such company or copartnership, as the nominal plaintiff, petitioner, or defendant, on behalf of such company or copartnership, as are provided with respect to companies carrying on the said trade or business at any place in Ireland exceeding the distance of 50 miles from Dublin, under the provisions of an act passed in the 6th year of the reign of King George the Fourth, intituled “An Act for the better regulation of copartnerships of certain bankers in Ireland;” and all judgments, decrees, and orders made and obtained in any action, suit, or other proceeding brought, instituted, or carried on by or against any such company or copartnership carrying on business within the distance of 50 miles from Dublin, in the name of their public officer, shall have the same effect and operation, and may be enforced in like manner in all respects, as is provided in and by the last-mentioned act with respect to the judgments, decrees, and orders therein mentioned; provided that every such company or copartnership as last aforesaid shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last-mentioned act; and all the provisions of the last-mentioned act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by the said last-mentioned companies, as if they had been originally included in the provisions of the last-mentioned act.

Companies to sue and be sued in the names of their officers.

6 Geo. 4, c. 42.

32. That the term “bank note” used in this act shall extend and apply to all bills or notes for the payment of money to the bearer on demand; and that the term “banker” shall, when the Bank of Ireland be not specially excepted, extend and apply to the Governor and Company of the Bank of Ireland, and to all other corporations, societies, partnerships, and persons, and every individual person carrying on the business of banking, whether by the issue of bank notes or otherwise; and that the word “coin” shall be construed to mean the coin of this realm; and that the word “person” used in this act shall include corporations; and that the singular number used in this act shall include the plural

Interpretation of act.

(a) This repealed by 38 & 39 Vict. c. 66.

number, and the plural number the singular, except where there is anything in the context repugnant to such construction; and that the masculine gender in this act shall include the feminine, except where there is anything in the context repugnant to such construction.

*Stamp Duties in force for a limited Period made Perpetual.*

16 & 17 VICT. c. 59, s. 20.

*An Act . . . . . to make perpetual certain Stamp Duties in Ireland (a).* [4th August, 1853.]

20. And whereas by an act passed in the session of parliament held in the 5th and 6th years of her Majesty's reign, chapter 82, certain rates and duties, denominated stamp duties, were granted and made payable in Ireland for a limited term; and by four several acts passed respectively in the 8th, 11th, 14th and 15th years of her Majesty's reign, the same rates and duties were continued for four other several and successive terms, the last of which will expire on the 10th day of October, 1853; and it is expedient to make the said rates and duties perpetual.

Stamp duties in Ireland, 5 & 6 Vict. c. 82, and continued by 8 & 9 Vict. c. 2, 11 & 12 Vict. c. 9, 14 & 15 Vict. c. 18, and 15 & 16 Vict. c. 21, made perpetual.

All the several sums of money and duties, and composition for duties granted and made payable in Ireland by the said act of the 5th and 6th years of her Majesty, chapter 82, and not repealed by any subsequent act, and also all duties now payable in lieu or instead of any of the said duties which may have been so repealed, shall be and the same are hereby continued and made perpetual, and shall be charged, raised, levied, collected, and paid unto and for the use of her Majesty, her heirs and successors for ever. The said act of the 5th and 6th years of her Majesty, and all and every other act or acts now in force in relation to the duties and composition for duties which are continued by this act, shall severally be continued and remain in full force in all respects in relation to the said duties and composition for duties hereby continued and granted, and all and every the powers and authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters and things contained in the said acts or any of them, and in force as aforesaid, shall severally and respectively be duly observed, practised, applied and put

Acts continued in force.

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(a) The Inland Revenue Repeal Act, 1870, 33 & 34 Vict. c. 99, s. 2, excepts sect. 20 from its operation, so far as it continues or perpetuates any enactment, which is thereby repealed.

in execution in relation to the said duties, and compositions for duties hereby continued and granted, for the charging, raising, levying, paying, accounting for, and securing of the said duties and composition for duties, and all arrears thereof; and for preventing, detecting and punishing of all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if the same powers, authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters and things were particularly repeated and re-enacted in the body of this act with reference to the said duties and composition for duties hereby granted.

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*Compositions for Stamp Duty on Bank Post Bills of 5l. and upwards.*

27 & 28 VICT. c. 86.

*An Act to permit for a limited Period Compositions for Stamp Duty on Bank Post Bills of 5l. and upwards in Ireland.*  
[29th July, 1864.]

WHEREAS by an act passed in the 16th and 17th years of her Majesty's reign, chapter 63, the commissioners of her Majesty's treasury are authorized and empowered to compound and agree with all or any bankers in Scotland or elsewhere for a composition in lieu of the stamp duties payable on the bills of exchange of such bankers: and whereas it is expedient to permit bankers in Ireland for a limited period to compound for the stamp duties payable on their bank post bills as well as on their bills of exchange: be it enacted, &c. as follows: 16 & 17 Vict. c. 63.

1. It shall be lawful for the commissioners of her Majesty's treasury and they are hereby authorized and empowered to compound and agree with any banker in Ireland for a composition in lieu of the stamp duties payable on the bank post bills to be made or drawn by such banker at any time *during the period of three years from the passing of this act (a)*, for any sum of money amounting to 5l. or upwards, and such composition shall be made on the like terms and conditions and with such security as the said commissioners are by the said act empowered to require in the case of compounding for the stamp duties on bills of exchange; and upon such composition being entered into by such banker it shall be lawful for him *during the period aforesaid (a)*, to make, draw, and

Power to treasury to compound with bankers in Ireland for the stamp duty on bank post bills for a period of three years.

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(a) These words repealed by Statute Law Revision Act, 1875.

issue all such bank post bills, for which composition shall have been made, on unstamped paper, anything in any act contained to the contrary notwithstanding.

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*Compositions for Stamp Duty on Bank Post Bills of 5l. and upwards.*

30 & 31 VICT. c. 89.

*An Act to render perpetual an Act passed in the Session holden in the 27th and 28th Years of her present Majesty, intituled "An Act to permit for a limited Period Compositions for Stamp Duty on Bank Post Bills of 5l. and upwards in Ireland."*  
[12th August, 1867.]

27 & 28 Vict.  
c. 86.

WHEREAS by an act passed in the session holden in the 27th and 28th years of the reign of her present Majesty, chapter 86, intituled "An Act to permit for a limited period compositions for stamp duty on bank post bills of 5l. and upwards in Ireland," the commissioners of her Majesty's treasury are empowered to compound and agree, in manner therein mentioned, with any banker in Ireland for a composition in lieu of the stamp duties payable on the bank post bills to be made or drawn by such banker at any time during the period of three years from the passing of the said act for any sum of money amounting to 5l. and upwards: and whereas it is expedient to make perpetual the powers conferred by the said act: be it enacted, &c., as follows:

Powers of  
27 & 28 Vict.  
c. 86, made  
perpetual.

1. The powers conferred by the said act of the session of the 27th and 28th years of the reign of her present Majesty shall be perpetual, *and the said act shall be construed as if the words "during the period of three years from the passing of this act" had been omitted therefrom (b).*

Short title.

2. This act may be cited for all purposes as "The Stamp Duty Composition (Ireland) Act, 1867."

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(b) These words repealed by Statute Law Revision Act, 1875.

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# Supplement

TO THE

FOURTH EDITION OF GRANT'S TREATISE

ON THE

# LAW RELATING TO BANKERS

AND

## BANKING COMPANIES,

CONTAINING THE

BILLS OF EXCHANGE AND BILLS OF SALE ACTS, 1882,

WITH NOTES.

BY

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# Supplement.

## BILLS OF EXCHANGE ACT, 1882.

45 & 46 VICT. c. 61.

*An Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes.* [18th August, 1882.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

### PART I.—PRELIMINARY.

1. This act may be cited as the Bills of Exchange Act, Short title. 1882 (*a*).
2. In this act, unless the context otherwise requires,—
 

<p>“Acceptance” means an acceptance completed by delivery or notification (<i>b</i>).</p> <p>“Action” includes counter claim and set off.</p> <p>“Banker” includes a body of persons whether incorporated or not who carry on the business of banking.</p> <p>“Bankrupt” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.</p> <p>“Bearer” means the person in possession of a bill or note which is payable to bearer.</p> <p>“Bill” means bill of exchange, and “note” means promissory note (<i>c</i>).</p> <p>“Delivery” means transfer of possession, actual or constructive, from one person to another (<i>d</i>).</p> <p>“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof (<i>e</i>).</p> <p>“Indorsement” means an indorsement completed by delivery (<i>f</i>).</p>	<p>Interpreta- tion of terms.</p>
---	---------------------------------------

(*a*) The law relating to the issue of bank notes is not affected by this act (sect. 97). The act extends to Ireland and Scotland, and only to bills, cheques, and notes.

(*b*) See sect. 21 as to what constitutes “delivery.”

(*c*) For further definition of “bill,” see sect. 3 (1), and for “note,” see sect. 83; for definition of “bill payable on demand,” see sect. 10, and for “cheques,” sect. 73.

(*d*) As to what amounts to an effectual delivery, see sect. 21.

(*e*) For definition of “holder in due course,” see sect. 29.

(*f*) As to the requisites of a valid indorsement, and as to the kinds of indorsements, see sects. 32, 33, 34, 35.

- “Issue” means the first delivery of a bill or note, complete in form to a person who takes it as a holder.
- “Person” includes a body of persons whether incorporated or not (*f*).
- “Value” means valuable consideration (*g*).
- “Written” includes printed, and “writing” includes print.

## PART II.—BILLS OF EXCHANGE.

### *Form and Interpretation.*

Bill of  
exchange  
defined.

3. (1.) A bill of exchange is an unconditional order in writing, addressed by one person (*h*) to another (*i*), signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person (*k*), or to bearer.

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason—

- (a.) That it is not dated (*l*);
- (b.) That it does not specify the value given, or that any value has been given therefor;
- (c.) That it does not specify the place where it is drawn or the place where it is payable.

Inland and  
foreign bills.

4. (1.) An inland bill is a bill which is or on the face of it purports to be (a) both drawn and payable within the British Islands, or (b) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill (*m*).

For the purposes of this act “British Islands” mean any

(*f*) As to a corporation drawing, accepting, or indorsing bills, see sect. 22.

(*g*) See further as to valuable consideration, sect. 27.

(*h*) Called the “drawer.”

(*i*) Called the “drawee,” and if he accepts, the “acceptor.”

(*k*) Called the “payee.”

(*l*) See further as to dating a bill, sects. 12, 13.

(*m*) Foreign bills are frequently drawn in sets. See sect. 71. The provisions in the Stamp Act relating to foreign bills are still in force. See sect. 97 (3). The Stamp Act is printed in the Appendix to Grant, p. 643.

part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of her Majesty.

(2.) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill (*n*).

5. (1.) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

Effect where different parties to bill are the same person.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

6. (1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

Address to drawee.

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

7. (1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

Certainty required as to payee.

(2.) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being (*o*).

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

8. (1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable (*p*), it is valid as between the parties thereto, but is not negotiable.

What bills are negotiable.

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or *which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable* (*q*).

(*n*) This is new.

(*o*) This provision as to an alternative payee and to the holder of an office for the time being is new.

(*p*) See sects. 35, 36.

(*q*) This is new. A bill payable to A. B. will henceforth be equivalent to a bill payable to "A. B. or order."

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable. 9. (1.) The sum payable by a bill is a sum certain within the meaning of this act, although it is required to be paid—

(a.) With interest.

(b.) By stated instalments.

(c.) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(d.) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable (*r*).

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

Bill payable  
on demand.

10. (1.) A bill is payable on demand—

(a.) Which is expressed to be payable on demand, or at sight, or on presentation; or

(b.) In which no time for payment is expressed.

(2.) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand (*s*).

Bill payable  
at a future  
time.

11. A bill is payable at a determinable future time within the meaning of this act which is expressed to be payable—

(1.) At a fixed period after date or sight (*t*).

(2.) On or at a fixed period after the occurrence of a specified event *which is certain to happen*, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

Omission of  
date in bill  
payable after  
date.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder

(*r*) This is confirmatory of the common law. See Grant, p. 16.

(*s*) As to when a bill payable on demand is to be deemed to be overdue, see sect. 36 (3); and as to the equities attaching to an overdue bill, *ib.* sub-sect. 2. As to presentment of such bills, see sect. 45 (2). As to the effect of a banker paying such bills with a forged indorsement thereon, see sect. 60. A cheque is defined by sect. 73 to be a bill payable on demand.

(*t*) See sects. 14 (2), (3), and 65 (5).

may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date (*u*).

13. (1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be. Ante-dating  
and post-  
dating.

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday (*v*).

14. Where a bill is not payable on demand (*x*) the day on which it falls due is determined as follows: Computation  
of time of  
payment.

(1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(a.) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day (*y*);

(b.) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day. 34 & 35 Vict.  
c. 17.

(2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3.) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

(4.) The term "month" in a bill means calendar month.

(*u*) This section is new.

(*v*) As to the former law relating to post-dating cheques, see Grant,

p. 14.

(*x*) As to what bills are payable on demand, see sect. 10.

(*y*) This is new. As to the expression "business day," see sect. 92.

- Case of need. 15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit (z).
- Optional stipulations by drawer or indorser. 16. The drawer of a bill, and any indorser, may insert therein an express stipulation—  
 (1.) Negating or limiting his own liability to the holder :  
 (2.) Waiving as regards himself some or all of the holder's duties.
- Definition and requisites of acceptance. 17. (1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.  
 (2.) An acceptance is invalid unless it complies with the following conditions, namely :  
 (a.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.  
 (b.) It must not express that the drawee will perform his promise by any other means than the payment of money.
- Time for acceptance. 18. A bill may be accepted—  
 (1.) Before it has been signed by the drawer, or while otherwise incomplete (a).  
 (2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment (b).  
 (3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance (c).
- General and qualified acceptances. 19. (1.) An acceptance is either (a) general, or (b) qualified (d).  
 (2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.  
 In particular an acceptance is qualified which is—  
 (a.) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated (e) :

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(z) By sect. 67 the bill must be noted before presentment to the referee. It would seem that notice of dishonour to the referee is not notice to the indorser (*In re Leeds Banking Co., Ex parte Prange*, L. R., 1 Eq. 1).

(a) See sect. 21.

(b) See sects. 10, 39 (4).

(c) This sub-section is new.

(d) See Grant, p. 102, where the subject of general and qualified acceptances is fully discussed. As to the right of the holder to refuse, and the effect of such an acceptance, see sect. 44.

(e) See Grant, p. 105.

(b.) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn :

(c.) local, that is to say, an acceptance to pay only at a particular specified place (*f*) :

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere (*f*) :

(d.) qualified as to time ;

(e.) the acceptance of some one or more of the drawees, but not of all.

20. (1.) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. Inchoate instruments.

(2.) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given (*g*).

21. (1.) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto. Delivery.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a.) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be :

(b.) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill (*h*).

(*f*) See Grant, p. 102.

(*g*) For definition of "holder in due course," see sect. 29.

(*h*) As to deposit of bills with banker for special purposes, &c., see Grant, pp. 150, 177.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

### *Capacity and Authority of Parties.*

Capacity of parties.

**22.** (1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

**23.** No person is liable as drawer, indorser, or acceptor of a bill who has not signed it *as such* (i): Provided that

(1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:

(2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm (k).

Forged or unauthorized signature.

**24.** Subject to the provisions of this act (l), where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery (m).

Procurator signatures.

**25.** A signature by procurator operates as notice that the

(i) Except in the case of a blank signature, see sect. 20.

(k) See further as to bills drawn by partners, Grant, pp. 252, 256.

(l) See sects. 54 (2), 55, 60, 80 and 82.

(m) By sect. 73, this section applies to cheques. As regards the banker's obligation to know his customer's signature at common law, see Grant, p. 11; and for cases in which the customer has been disallowed to set up a forgery, see Grant, p. 17. As to forged *indorsements* on cheques, see sects. 60 and 82.

agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority (*n*).

26. (1.) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

Person signing as agent or in representative capacity.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted (*o*).

### *The Consideration for a Bill.*

27. (1.) Valuable consideration for a bill may be constituted by—

Value and holder for value.

(a.) Any consideration sufficient to support a simple contract;

(b.) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien (*p*).

28. (1.) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

Accommodation bill or party.

(2.) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not (*q*).

(*n*) See Grant, pp. 300, 301.

(*o*) As to the liability of an agent signing without authority, see Grant, p. 301. The Companies Act is not affected by this act, see sect. 97; and consequently the provisions of the 47th section of the former statute, relating to the signing of bills by agents, still remain in force.

(*p*) As to banker's lien, see Grant, p. 244.

(*q*) As to notice of dishonour being dispensed with in case of accommodation bill, see sect. 50 (2) (c) and (d), and Grant, p. 536.

Holder in  
due course.

29. (1.) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions; namely—

- (a.) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:
- (b.) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3.) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder (*r*).

Presumption  
of value and  
good faith.

30. (1.) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.

(2.) Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

### *Negotiation of Bills.*

Negotiation  
of bill.

31. (1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill (*s*).

(2.) A bill payable to bearer is negotiated by delivery (*t*).

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery (*u*).

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the

(*r*) The expression "holder in due course" is substituted for the common law expression, "*bonâ fide* holder and for value." As to the rights of a "holder in due course," see sect. 38.

(*s*) For definition of holder, see sect. 2.

(*t*) As to delivery, see sects. 2, 21.

(*u*) See as to indorsement, sects. 32, 33, 34, 35.

transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability (*x*).

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely—

Requisites  
of a valid  
indorsement.

(1.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge (*y*), or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself.

(2.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

(5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive (*z*).

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not (*a*).

Conditional  
indorsement.

34. (1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

Indorsement  
in blank and  
special in-  
dorsement.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(*x*) See sects. 16, 25, 26, and Grant, p. 301.

(*y*) An "allonge" is a slip of paper annexed to the bill where there is no room left for further indorsements.

(*z*) See sect. 35.

(*a*) This is new. As regards the old law, see *ante*, p. 298.

(3.) The provisions of this act relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement (*e*).

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

Restrictive  
indorsement.

**35.** (1.) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof; as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorize him to do so.

(3.) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights, and subject to the same liabilities as the first indorsee under the restrictive indorsement (*d*).

Negotiation  
of overdue or  
dishonoured  
bill.

**36.** (1.) Where a bill is negotiable in its origin, it continues to be negotiable until it has been (a) restrictively indorsed, or (b) discharged by payment or otherwise (*e*).

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had (*f*).

(3.) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact (*g*).

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is *primâ facie* deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of

(*c*) See sects. 7, 8.

(*d*) As regards restrictive indorsements at common law, see *ante*, p. 299.

(*e*) As to discharge of bill, see sects. 59 *et seq.*

(*f*) As to defective title, see sect. 29 (2).

(*g*) This provision, though it does not apply to notes (see sect. 86 (3)), applies to cheques (see sect. 73). See as to the common law rule regarding the latter instruments, *ante*, pp. 57, 58.

dishonour, but nothing in this sub-section shall affect the rights of a holder in due course (*h*).

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this act (*i*), re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Negotiation of bill to party already liable thereon.

38. The rights and powers of the holder of a bill are as follows:

Rights of the holder.

(1.) He may sue on the bill in his own name:

(2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill:

(3.) Where his title is defective (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (b) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill (*h*).

#### *General Duties of the Holder.*

39. (1.) Where a bill is payable after sight, presentment for acceptance is necessary, in order to fix the maturity of the instrument.

When presentment for acceptance is necessary.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers (*k*).

40. (1.) Subject to the provisions of this act (*l*), when a bill payable after sight is negotiated, the holder must either

Time for presenting bill payable after sight.

(*h*) As to "holder in due course," and "defects of title," see sect. 29. This section does not apply to a person deriving a title through a forgery, see sect. 24.

(*i*) See sects. 59 (3) and 61.

(*k*) This provision is new.

(*l*) See sect. 41 (2).

present it for acceptance or negotiate it within a reasonable time.

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to  
presentment  
for accept-  
ance, and  
excuses for  
non-present-  
ment.

41. (1.) A bill is duly presented for acceptance which is presented in accordance with the following rules:

- (a.) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:
- (b.) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only:
- (c.) Where the drawee is dead, presentment may be made to his personal representative:
- (d.) Where the drawee is bankrupt, presentment may be made to him or to his trustee:
- (e.) Where authorized by agreement or usage, a presentment through the post office is sufficient.
- (2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—
- (a.) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:
- (b.) Where, after the exercise of reasonable diligence, such presentment cannot be effected:
- (c.) Where although the presentment has been irregular, acceptance has been refused on some other ground.
- (3.) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-accept-  
ance.

42. (1.) When a bill is duly presented for acceptance and is not accepted within the customary time (n), the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour  
by non-  
acceptance  
and its con-  
sequences.

43. (1.) A bill is dishonoured by non-acceptance—

- (a.) When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

---

(n) Usually 24 hours. See Byles on Bills, p. 185, 13th ed.

(b.) When presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this act (*o*) when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

44. (1.) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

Duties as to qualified acceptances.

(2.) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto (*p*).

45. Subject to the provisions of this act a bill must be duly presented for payment (*q*). If it be not so presented the drawer and indorsers shall be discharged.

Rules as to presentment for payment.

A bill is duly presented for payment which is presented in accordance with the following rules:—

(1.) Where the bill is not payable on demand, presentment must be made on the day it falls due (*r*).

(2.) Where the bill is payable on demand, then, subject to the provisions of this act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable (*s*).

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case (*t*).

(3.) Presentment must be made by the holder or by some person authorized to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by

(*o*) See sect. 65.

(*p*) See further as to qualified acceptances, *ante*, p. 102, and sect. 19.

(*q*) See next section.

(*r*) See sect. 14.

(*s*) As to cheques, see sect. 74.

(*t*) See as to cheques, p. 49.

the bill as payer, or to some person authorized to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

- (4.) A bill is presented at the proper place:—
  - (a.) Where a place of payment is specified in the bill and the bill is there presented.
  - (b.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.
  - (c.) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.
  - (d.) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.
- (5.) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
- (7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found (*u*).
- (8.) Where authorized by agreement or usage a presentment through the post office is sufficient.

Excuses for  
delay or non-  
presentment  
for payment.

46. (1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

- (2.) Presentment for payment is dispensed with,—
  - (a.) Where, after the exercise of reasonable diligence, presentment, as required by this act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

- (b.) Where the drawee is a fictitious person.
- (c.) As regards the drawer where the drawee or acceptor is

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(*u*) The case of the acceptor having become bankrupt is not dealt with. It is presumed, however, the presentment would still have to be made to him. As to presentment of notes, see *ante*, p. 245.

not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(d.) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(e.) By waiver of presentment, express or implied.

47. (1.) A bill is dishonoured by non-payment (a) when it is duly presented for payment and payment is refused or cannot be obtained, or (b) when presentment is excused and the bill is overdue and unpaid. Dishonour by non-payment.

(2.) Subject to the provisions of this act (x), when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

48. Subject to the provisions of this act (y), when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that— Notice of dishonour and effect of non-notice.

(1.) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2.) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules :— Rules as to notice of dishonour.

(1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2.) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.

(3.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5.) The notice may be given in writing or by personal communication, and may be given in any terms which

(x) See sects. 65—68.

(y) See sect. 50.

sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

- (6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
- (7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf (*y*).
- (9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.
- (10.) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.
- (11.) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (12.) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless,—

- (a.) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.
- (b.) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter (*z*).
- (13.) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal

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(*y*) A "referee in case" of need does not appear to be an agent for an indorser for this purpose. See *In re Leeds Banking Co., Ex parte Prange*, L. R., 1 Eq. 1.

(*z*) See as to cheques, Grant, p. 49.

upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder (*a*).

(14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

50. (1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence. Excuses for non-notice and delay.

(2.) Notice of dishonour is dispensed with—

(a.) When, after the exercise of reasonable diligence, notice as required by this act cannot be given to or does not reach the drawer or indorser sought to be charged :

(b.) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice :

(c.) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment :

(d.) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation (*b*).

51. (1.) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be ; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser (*c*). Noting or protest of bill.

(*a*) See Grant, p. 84.

(*b*) See as to notice being excused in the case of accommodation bills, Grant, pp. 85, 536.

(*c*) The expenses of noting may be recovered, see sect. 57 (1). See also as to the necessity of noting a bill, sects. 65—67.

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5.) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6.) A bill must be protested at the place where it is dishonoured: Provided that—

(a.) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day:

(b.) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a.) The person at whose request the bill is protested:

(b.) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof (e).

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour (f). Delay in noting

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(e) See further as to lost bills, sects. 69, 70.

(f) Sect. 50.

or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

52. (1.) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable. Duties of holder as regards drawee or acceptor.

(2.) When by the terms of a qualified acceptance (g) presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4.) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

#### *Liabilities of Parties.*

53. (1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this act is not liable on the instrument. This sub-section shall not extend to Scotland. Funds in hands of drawee.

(2.) In Scotland where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

54. The acceptor of a bill, by accepting it—

Liability of acceptor.

(1.) Engages that he will pay it according to the tenor of his acceptance :

(2.) Is precluded from denying to a holder in due course :

(a.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill ;

(b.) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement ;

(c.) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

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(g) See sects. 19, 44.

Liability of  
drawer or  
indorser.

55. (1.) The drawer of a bill by drawing it—

- (a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- (b.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2.) The indorser of a bill by indorsing it—

- (a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- (b.) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;
- (c.) Is precluded from denying to his immediate or subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger  
signing bill  
liable as in-  
dorser.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Measure of  
damages  
against par-  
ties to dis-  
honoured bill.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:

- (1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—
  - (a.) The amount of the bill;
  - (b.) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;
  - (c.) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.
- (2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange (*h*) with interest thereon until the time of payment.

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(*h*) Re-exchange is the difference in the value of a bill occasioned by its being dishonoured in a foreign country in which it was payable. The

(3.) Where by this act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

58. (1.) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery." Transferor by delivery and transferee.

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless (*i*).

### *Discharge of Bill.*

59. (1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor. Payment in due course.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective (*k*).

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(a.) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b.) where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in Banker paying demand draft whereon

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existence and amount of it depend on the rate of exchange between the two countries. Byles on Bills, p. 418, 13th edit.

(*i*) For definition of the terms "delivery" and "bearer," and for "holder" and "value," see sect. 2; and see further as to the transferor's liability, Grant, p. 343.

(*k*) Payment to a person claiming through a forged indorsement does not discharge the payer (see sect. 21), except in the case mentioned in the next section.

indorsement  
is forged.

good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority (*m*).

Acceptor the  
holder at  
maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express  
waiver.

62. (1.) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be *in writing* (*n*), unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63. (1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of  
bill.

64. (1.) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers.

Provided that,—

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill

(*m*) This enactment, so far as it extends to cheques, is similar to 16 & 17 Vict. c. 59, s. 19 (see *ante*, sect. 22), which act, it must be noticed, is not repealed. See further, sects. 73, 74.

(*n*) This is new. Formerly not even a writing was required. Consideration for the renunciation need not exist.

as if it had not been altered, and may enforce payment of it according to its original tenour (*o*).

(2.) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent (*p*).

*Acceptance and Payment for Honour.*

65. (1.) Where a bill of exchange has been *protested* (*q*) for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *suprà* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. Acceptance for honour *suprà* protest.

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour *suprà* protest in order to be valid must—

(a.) be written on the bill, and indicate that it is an acceptance for honour :

(b.) be signed by the acceptor for honour (*r*).

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

66. (1.) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts. Liability of acceptor for honour.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

(*o*) This important provision is new. An alteration may, however, be such as to constitute the instrument a new bill, and as such render it void under the Stamp Act for want of a stamp.

(*p*) As to alteration of cheque before this act, see Grant, p. 14; and as regards bank notes, see Addendum.

(*q*) As to when noting is equivalent to protest, see sect. 93.

(*r*) An acceptance for honour *suprà* protest need not be made before a notary public. Payment for honour *suprà* protest, on the other hand, must be. See sect. 68 (3), (4).

Presentment  
to acceptor  
for honour.

67. (1.) Where a dishonoured bill has been accepted for honour *suprà* protest, or contains a reference in case of need, it must be *protested* (*t*) for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment (*u*).

(4.) When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him.

Payment for  
honour *suprà*  
protest.

68. (1.) Where a bill has been *protested* (*t*) for non-payment, any person may intervene and pay it *suprà* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour *suprà* protest, in order to operate as such and not as a mere voluntary payment, *must be attested by a notarial act of honour*, which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment *suprà* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

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(*t*) As to noting in lieu of protest, see sect. 93. (*u*) See sect. 46.

*Lost Instruments.*

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

Holder's  
right to  
duplicate of  
lost bill.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so (x).

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question (x).

Action on  
lost bill.

*Bill in a Set.*

71. (1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill (y).

Rules as to  
sets.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders *in due course* (z), the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

(x) As to the former law respecting lost cheques and bills, see Grant, p. 89, and as to the loss of bank notes, Grant, p. 355.

(y) Foreign bills are frequently drawn in parts. Byles, p. 393, 13th ed.

(z) See sect. 29.

*Conflict of Laws.*

Rules where  
laws conflict.

**72.** Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows :

- (1.) The validity of a bill as regards requisites in form is determined by the law of the place of *issue* (a), and the validity as regards requisites in form of the supervening contracts, such as *acceptance* (a), or *indorsement* (a), or acceptance *suprà* protest, is determined by the law of the place where such contract was made.

Provided that—

- (a.) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue :
- (b.) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.
- (2.) Subject to the provisions of this act, the interpretation of the drawing, indorsement, acceptance, or acceptance *suprà* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

- (3.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.
- (4.) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.
- (5.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

### PART III.—CHEQUES ON A BANKER.

Cheque defined.

**73.** A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this part, the provisions of

---

(a) For definition of these terms, see sect. 2.

this act applicable to a bill of exchange payable on demand apply to a cheque (*b*).

74. Subject to the provisions of this act (*c*)—

Presentment  
of cheque for  
payment.

(1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

(2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him (*d*).

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

Revocation of  
banker's  
authority.

(1.) Countersmand of payment:

(2.) Notice of the customer's death (*e*).

*Crossed Cheques* (*f*).

76. (1.) Where a cheque bears across its face an addition of—

General and  
special cross-  
ings defined.

(a.) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or

(*b*) A cheque being thus made equivalent to a bill payable on demand, not merely will those sections which especially deal with such bills (see sects. 36 (3), 45 (2) and 60) apply to cheques, but, it is presumed, *all* those sections of the act which deal with, and are applicable to, bills generally. For definition of a "bill payable on demand," see sect. 10. The term "banker" is defined by sect. 2.

(*c*) See excuses for Non-presentment, stated in sect. 46.

(*d*) This section is new and alters the common law.

(*e*) As to the effect of death at common law, see Grant, pp. 85, 88. Notice of an act of bankruptcy by the customer also determines the banker's authority. See sect. 97, by which the bankruptcy laws are preserved.

(*f*) The Crossed Cheques Act of 1876 is repealed by the present act (see second schedule), but its provisions are, with one or two additions, substantially re-enacted by the following sections. For a full discussion on the old law relating to crossed cheques, see Grant, p. 63. The provisions of this act as to crossed cheques apply also to all dividend warrants, see sect. 95.

(b.) Two parallel transverse lines simply, either with or without the words "not negotiable"; that addition constitutes a crossing, and the cheque is crossed generally.

(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by  
drawer or  
after issue.

77. (1.) A cheque may be crossed generally or specially by the drawer.

(2.) Where a cheque is uncrossed, the holder (*g*) may cross it generally or specially (*h*).

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5.) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself (*h*).

Crossing a  
material part  
of cheque.

78. A crossing authorized by this act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this act, to add to or alter the crossing (*i*).

Duties of  
banker as to  
crossed  
cheques.

79. (1.) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of

(*g*) The "holder" is defined by sect. 2.

(*h*) These clauses are new.

(*i*) See further as to "alterations," sect. 64.

the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Protection to banker and drawer where cheque is crossed.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Effect of crossing on holder.

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title, or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Protection to collecting banker.

#### PART IV.—PROMISSORY NOTES (*k*).

83. (1.) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

Promissory note defined.

(2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof.

(4.) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note (*l*).

84. A promissory note is inchoate and incomplete until delivery (*m*) thereof to the payee or bearer.

Delivery necessary.

85. (1.) A promissory note may be made by two or more

Joint and several notes.

(*k*) As regards bank note, see Grant, p. 340.

(*l*) As to inland and foreign bills, see sect. 4.

(*m*) See further as to delivery, sects. 2, 21.

makers, and they may be liable thereon jointly, or jointly and severally, according to its tenour.

(2.) Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.

Note payable  
on demand.

86. (1.) Where a note *payable on demand* (n) has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2.) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3.) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment  
of note for  
payment.

87. (1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice (o).

Liability of  
maker.

88. The maker of a promissory note by making it—

(1.) Engages that he will pay it according to its tenour;

(2.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application  
of Part II. to  
notes.

89. (1.) Subject to the provisions in this part and, except as by this section provided, the provisions of this act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3.) The following provisions as to bills do not apply to notes; namely, provisions relating to—

(a.) Presentment for acceptance;

(n) See sect. 10.

(o) See Grant, p. 106; and see sect. 52.

- (b.) Acceptance ;
- (c.) Acceptance *suprà* protest ;
- (d.) Bills in a set.
- (4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

## PART V.—SUPPLEMENTARY.

90. A thing is deemed to be done in good faith, within the meaning of this act, where it is in fact done honestly, whether it is done negligently or not (*p*). Good faith.

91. (1.) Where, by this act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority. Signature.

(2.) In the case of a corporation, where, by this act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal (*q*).

92. Where, by this act, the time limited for doing any act or thing is less than three days, in reckoning time non-business days are excluded (*r*). Computation of time.

“Non-business days,” for the purposes of this act, mean—

(a.) Sunday, Good Friday, Christmas Day :

(b.) A bank holiday under the Bank Holidays Act, 1871, or acts amending it :

(c.) A day appointed by royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

93. For the purposes of this act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting (*s*). When noting equivalent to protest.

94. Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. Protest when notary not accessible.

(*p*) See on this subject, Grant, p. 355.

(*q*) See Grant, pp. 32, 33.

G.

(*r*) See sects. 49 (12), 67 (2).

(*s*) See sects. 65 to 68.

Dividend warrants may be crossed.

Repeal.

Savings.

33 & 34 Vict.  
c. 97.

25 & 26 Vict.  
c. 89.

Saving of summary diligence in Scotland.

Construction with other acts, &c.

Parol evidence allowed in certain judicial pro-

The form given in Schedule 1 to this act may be used with necessary modifications, and if used shall be sufficient.

95. The provisions of this act as to crossed cheques shall apply to a warrant for payment of dividend (*t*).

96. The enactments mentioned in the second schedule to this act are hereby repealed as from the commencement of this act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

97. (1) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this act contained.

(2) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3) Nothing in this act or in any repeal effected thereby shall affect—

(a) The provisions of the Stamp Act, 1870 (*u*), or acts amending it, or any law or enactment for the time being in force relating to the revenue:

(b) The provisions of the Companies Act, 1862, or acts amending it, or any act relating to joint stock banks or companies (*x*):

(c) The provisions of any act relating to or confirming the privileges of the bank of England or the bank of Ireland respectively (*y*):

(d) The validity of any usage relating to dividend warrants, or the indorsements thereof.

98. Nothing in this act, or in any repeal effected thereby, shall extend or restrict, or in any way alter or affect, the law and practice in Scotland in regard to summary diligence (*z*).

99. Where any act or document refers to any enactment repealed by this act, the act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this act.

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved

(*t*) The Crossed Cheques Act, 1876, merely applied to dividend warrants of the Banks of England and Ireland. See Grant, p. 68.

(*u*) See Grant, Appendix, p. 643.

(*x*) See Grant, p. 639.

(*y*) See Appendix, p. 569.

(*z*) See 12 Geo. 3, c. 72, ss. 37, 39—43; 1 & 2 Vict. c. 114, ss. 1, 9.

by parole evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenour of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignment, or to find such caution, as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

## SCHEDULES.

### FIRST SCHEDULE.

Form of protest which may be used when the services of a notary cannot be obtained. Sect. 94.

Know all men that I, *A. B.* [householder], of \_\_\_\_\_, in the county of \_\_\_\_\_, in the United Kingdom, at the request of *C. D.*, there being no notary public available, did on the \_\_\_\_\_ day of \_\_\_\_\_, 188\_\_\_\_, at \_\_\_\_\_, demand payment [or acceptance] of the bill of exchange hereunder written, from *E. F.*, to which demand he made answer [state answer, if any] wherefore I now, in the presence of *G. H.* and *J. K.*, do protest the said bill of exchange.

(Signed) *A. B.*

*G. H.* } Witnesses.  
*J. K.* }

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

### SECOND SCHEDULE.

#### ENACTMENTS REPEALED.

Session and Chapter.	Title of Act and Extent of Repeal.
9 Will. 3, c. 17 ...	An act for the better payment of inland bills of exchange.
3 & 4 Anne, c. 8...	An act for giving like remedy upon promissory notes as is now used upon bills of exchange, and for the better payment of inland bills of exchange.
17 Geo. 3, c. 30 ...	An act for further restraining the negotiation of promissory notes and inland bills of exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3, c. 42	An act for the better observance of Good Friday in certain cases therein mentioned.
48 Geo. 3, c. 88 ...	An act to restrain the negotiation of promissory notes and inland bills of exchange under a limited sum in England.

SECOND SCHEDULE—*continued.*

Session and Chapter.	Title of Act and Extent of Repeal.
1 & 2 Geo. 4, c. 78 7 & 8 Geo. 4, c. 15	An act to regulate acceptances of bills of exchange. An act for declaring the law in relation to bills of exchange and promissory notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4, c. 24 . . .	An act to repeal certain acts, and to consolidate and amend the laws relating to bills of exchange and promissory notes in Ireland, in part; that is to say, Sections two, four, seven, eight, nine, ten, eleven.
2 & 3 Will. 4, c. 98	An act for regulating the protesting for non-payment of bills of exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.
6 & 7 Will. 4, c. 58	An act for declaring the law as to the day on which it is requisite to present for payment to acceptor, or acceptors <i>suprà</i> protest for honour, or to the referee or referees, in case of need, bills of exchange which have been dishonoured.
8 & 9 Vict. c. 37 . . in part.	An act to regulate the issue of bank notes in Ireland, and to regulate the repayment of certain sums advanced by the governor and company of the bank of Ireland for the public service, in part; that is to say, Section twenty-four.
19 & 20 Vict. c. 97 in part.	The Mercantile Law Amendment Act, 1856, in part; that is to say, Sections six and seven.
23 & 24 Vict. c. 111 in part.	An act for granting to her majesty certain duties of stamps, and to amend the laws relating to the stamp duties, in part; that is to say, Section nineteen.
34 & 35 Vict. c. 74	An act to abolish days of grace in the case of bills of exchange and promissory notes payable at sight or on presentation.
39 & 40 Vict. c. 81	The Crossed Cheques Act, 1876.
41 & 42 Vict. c. 13	The Bills of Exchange Act, 1878.
ENACTMENT REPEALED AS TO SCOTLAND.	
19 & 20 Vict. c. 60 in part.	The Mercantile Law (Scotland) Amendment Act, 1856, in part; that is to say, Sections ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen.

## BILLS OF SALE ACT (1878) AMENDMENT ACT. 1882.

45 & 46 VICT. c. 43.

*An Act to amend the Bills of Sale Act, 1878 (a).*

[18th August, 1882.]

Whereas it is expedient to amend the Bills of Sale Act, 1878: 41 & 42 Vict. c. 31.

Be it enacted, &c., as follows:

1. This act may be cited for all purposes as the Bills of Sale Act (1878) Amendment Act, 1882; and this act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882. Short title.

2. This act shall come into operation on the 1st day of November, 1882, which date is hereinafter referred to as the commencement of this act. Commence-  
ment of act.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal act," and this act shall, so far as is consistent with the tenor thereof, be construed as one with the principal act; but unless the context otherwise requires shall not apply to any bill of sale duly registered before the commencement of this act so long as the registration thereof is not avoided by non-renewal or otherwise. Construction  
of act.  
41 & 42 Vict.  
c. 31.

The expression "bill of sale," and other expressions in this act, have the same meaning as in the principal act, except as to bills of sale or other documents mentioned in section four of the principal act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this act shall not apply (b).

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described. Bill of sale to  
have schedule  
of property  
attached  
thereto.

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(a) Since the note on the draft bill of this act (see Grant, p. 565) was printed the bill has become law. Certain amendments and alterations having been made, however, it is thought advisable to insert the act in its entirety.

(b) See, also, sect. 17.

Bill of sale  
not to affect  
after-acquired  
property.

5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Exception as  
to certain  
things.

6. Nothing contained in the foregoing sections of this act shall render a bill of sale void in respect of any of the following things; (that is to say),

(1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.

(2.) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

Bill of sale  
with power to  
seize except  
in certain  
events to be  
void.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:—

(1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes;

(3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;

(4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes;

(5.) If execution shall have been levied against the goods of the grantor under any judgment at law:

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

Bill of sale to  
be void unless  
attested and  
registered.

8. Every bill of sale shall be duly attested, and shall be registered under the principal act within seven clear days after the execution thereof, or if it is executed in any place

out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein (c).

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this act annexed. Form of bill of sale.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed. Attestation.

11. Where the affidavit (which under section ten of the principal act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar. Local registration of contents of bills of sale.

32 & 33 Vict.  
c. 71, s. 60.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal act.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

Bill of sale under 30l. to be void.

13. All personal chattels seized or of which possession is taken after the commencement of this act, under or by virtue of any bill of sale (whether registered before or after the

Chattels not to be removed or sold.

commencement of this act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

Bill of sale  
not to protect  
chattels  
against poor  
and parochial  
rates.

14. A bill of sale to which this act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

Repeal of  
part of Bills  
of Sale Act,  
1878.

15. The eighth and the twentieth sections of the principal act, and also all other enactments contained in the principal act which are inconsistent with this act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal act before the commencement of this act.

Inspection of  
registered  
bills of sale.

16. So much of the sixteenth section of the principal act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Debentures  
to which act  
not to apply.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Extent of act.

18. This Act shall not extend to Scotland or Ireland.

#### SCHEDULE.

##### FORM OF BILL OF SALE.

THIS INDENTURE made the            day of           , between *A. B.* of  
of the one part, and *C. D.* of            of the other part, witnesseth that  
in consideration of the sum of £            now paid to *A. B.* by *C. D.*, the

receipt of which the said *A. B.* hereby acknowledges [*or whatever else the consideration may be*], he the said *A. B.* doth hereby assign unto *C. D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £           , and interest thereon at the rate of            per cent. per annum [*or whatever else may be the rate*]. And the said *A. B.* doth further agree and declare that he will duly pay to the said *C. D.* the principal sum aforesaid, together with the interest then due, by equal            payments of £            on the            day of           

[*or whatever else may be the stipulated times or time of payment*]. And the said *A. B.* doth also agree with the said *C. D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C. D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A. B.* in the presence of me *E. F.* [*add witness' name, address, and description*].



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